

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE N^o H204677

NATASHA ONICK, EMPLOYEE

CLAIMANT

**JACKSONVILLE SCHOOL DISTRICT,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOC.,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED 19 JULY 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 24 April 2024 in Little Rock, Arkansas.

Mr. Gary Davis, the Davis Law Firm, appeared on behalf of the claimant.

Ms. Melissa Wood, Worley, Wood & Parrish, appeared on behalf of the respondents.

STATEMENT OF THE CASE

A Motion to Dismiss was filed in this matter by the respondents on 19 March 2024, and a hearing on that motion was held in Little Rock, Arkansas, on 24 April 2024. In their motion, the respondents argued that this claim should be dismissed for the claimant's alleged failure to prosecute her claim under AWCC Rule 099.13 (Rule 13). The claimant was represented by Mr. Gary Davis, and the respondents were represented by Ms. Melissa Wood. The record consists of the hearing's transcript, along with the respondents' Exhibit N^o 1 (an index page and ten subsequent pages of forms, pleadings, and correspondence) and the parties' post-hearing briefs, which I have blue-backed to this Opinion.

PROCEDURAL HISOTRY

This claim arose from a workplace injury sustained on 24 September 2021. The claim was accepted by the respondents, according to a Form AR-2 dated 8 July 2022, as a

medical-only claim. [Resp. Ex. № 1.] The parties do not dispute the dates of other relevant filings in this matter that were discussed at the hearing as relevant to the motion, but not made part of the record. It is not disputed that a Full Hearing before Chief Administrative Law Judge (CALJ) O. Milton Fine II was held on 24 May 2023. The issues addressed in that hearing included whether the claimant was entitled to temporary total disability, additional medical benefits, and attorney’s fees; all other issues were reserved. The CALJ issued his Opinion on 22 August 2023, finding that the claimant was entitled to additional medical benefits, but that she had not met her burden on her other claims.

The claimant appealed the findings unfavorable to her to the AWCC Full Commission on 11 September 2023, and the Full Commission issued its Opinion on affirming and adopting the ALJ’s Opinion on 8 February 2024. Then, on 19 March 2024, the respondents filed the immediate motion. The claimant objected to the dismissal via email correspondence the following day. The respondents replied, noting (1) that their motion was brought under Rule 13 (and not under ACA § 11-9-702), (2) that Rule 13 did not require them to wait until six months after the filing of the Commission’s Opinion before seeking a dismissal, and (3) that they were requesting a hearing on their motion. [Resp. Ex. № 1.] A hearing was then coordinated, and notice was sent to all parties, accordingly.

ARGUMENT AT THE HEARING

At the hearing on their motion, the respondents noted that this claim had already proceeded through a hearing before an ALJ and that the CALJ’s Opinion was affirmed and adopted by the Full Commission. They argued that as the age of this claim is nearing four years from the date of injury— “anything left to litigate, that should be done by now.” [TR at 6.] The claimant objected to a dismissal of this claim. She argued that the respondents’ motion was “filed with all due haste” and noted that while *some* benefits were addressed in the earlier litigation, other potential issues remained.

Mr. Davis: Ms. Wood queries why is it that these other issues have not been litigated. Well, we litigated an issue of some temporary disability, and we litigated an issue of some medical treatment. We have not litigated all other issues that are reserved by virtue of the claim filing. That would be wage loss, disability, vocational rehabilitation, change of physician, et cetera.

Judge Howe: And I'll note for the record, if I can interrupt there, that Judge Fine's August 22nd Opinion does say on page 2 that all other issues have been reserved.

Mr. Davis: Correct. We just haven't had an opportunity, Your Honor. This last Opinion just became final and you can't litigate while you're waiting on an appeal to be finished out....

[TR at 7.]

The claimant went on to state that she was requesting a hearing on her entitlement to a change of physician, an issue that was not part of the earlier litigation. [TR at 14, 15.]

The respondents acknowledged that the claimant "did prosecute some of the claims made on the Form C, but certainly has not prosecuted most of them." [TR at 16.]

The parties went back-and-forth on the policy implications and the benefits or the detriments associated with piecemeal litigation processes, with the respondents summarizing, in part, their overarching position in saying, "[we] understand that the Commission can reserve issues, but here we are, a dismissal request has been made. If there's something to litigate, then, request a hearing, we'll start the prehearing process."

[TR at 23.]

Both parties then indicated that they intended to file post-hearing briefs. Those briefs, which were due within fourteen (14) days of the hearing date and timely received by the Commission, are blue-backed to this Opinion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, and having heard the arguments of counsel on the merits of the immediate motion, I make the following findings of fact and conclusions

of law, consistent with ACA § 11-9-704:

1. The Arkansas Workers' Compensation Commission has proper jurisdiction over this claim.
2. Consistent with Rule 13, the parties received notice of the hearing on the Motion to Dismiss.
3. Forty (40) days passed between the Full Commission's Opinion and the filing of the respondents' motion.
4. The claimant reserved her right to litigate additional issues not addressed at the May 2023 hearing, and she now seeks a hearing, in furtherance of her rights under her claim, on a change of physician.
5. The respondents failed to prove by a preponderance of the evidence that this claim should be dismissed for want of prosecution under Rule 13.
6. The respondents' motion is, therefore, denied.

ADJUDICATION

AWCC Rule 13, in pertinent part, states:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

In *Johnson v. Triple T Foods*, 55 Ark. App. 83, 929 S.W.2d 730, 1996 Ark. App. LEXIS 628, our Court of Appeals stated,

The Commission has the authority, under ACA § 11-9-205(a)(1)(A) (Repl. 1996), to make such rules and regulations as may be found necessary. Under this authority, the Commission has promulgated its Rule 13, which provides that if a party requests that a claim be dismissed for want of prosecution, the Commission may dismiss the claim.

It is under this Rule and authority that the respondents seek a dismissal of Ms. Onick's claim. I do not find, however, that the preponderance of the evidence supports a finding that Ms. Onick has failed to prosecute her claim.

This case is clearly distinguishable from *Johnson, supra*, where the Court approved of the Commission exercising its discretion to dismiss a claim under Rule 13. In that case,

“there had been no showing of any unresolved issues,” and the claimant acknowledged that “he was receiving, or had received, all benefits that he was entitled to receive.” *Id.* Its history also involved a refiling of a claim that laid dormant between October of 1993 and July of 1994.

The claim before me frames up quite differently. A hearing was held in May of 2023, and an ALJ’s Opinion was issued in August of 2023. The claimant took an appeal of that decision to the Full Commission in September of 2023. The Full Commission entered its Opinion on 8 February 2024, and the respondents’ motion followed just 40 days later. The claimant noted several potential issues of entitlement that are not yet resolved and requested a hearing on a change of physician at the hearing on the immediate motion. I cannot find, against that backdrop, that the claimant has failed to prosecute her claim. That she did not seek a hearing or perform some other overt “prosecutorial action” inside those 40 days between the Full Commission’s entry of its Opinion and the filing of the respondents’ motion should not prove fatal to the continuance of her claim.

ORDER

For the reasons noted above, the respondents’ motion to dismiss this claim is DENIED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE