

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G903915

SHAWN PALMER,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER, CO.,
SELF-INSURED EMPLOYER

RESPONDENT NO. 1

CENTRAL ADJUSTMENT COMPANY, INC.,
THIRD PARTY ADMINSTRATOR (TPA)

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED AUGUST 20, 2021

Hearing before Administrative Law Judge Chandra L. Black in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, appeared for the hearing.

Respondents No. 1 represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

Statement of the Case

A hearing was held on August 18, 2021, in the present matter pursuant to the provisions of Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Arkansas Code Annotated §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

The Commission attempted appropriate notice of the hearing on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the August 18, 2021, hearing and the documents contained therein. The remainder of the Commission’s file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents No. 1 introduced into evidence their Respondents’ Motion to Dismiss. It was marked as Respondents’ Exhibit 1.

Discussion

On June 28, 2019 the Claimant’s attorney filed with the Commission, a claim for workers’ compensation benefits by way of a Form AR-C. Per this document, the Claimant alleged an injury date of August 28, 2009. Specifically, counsel basically asserted that “Claimant sustained injuries to multiple body parts including his back, spine and legs.” Counsel for the Claimant checked off all the boxes for both initial and additional benefits.

However, on March 13, 2020, the Claimant’s attorney filed a Motion to Withdraw as Counsel. On May 20, 2020, the Full Commission entered an order granting the motion relieving the Claimant’s attorney as counsel of record in this claim.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on June 19, 2021 accepting the claim. Specifically, the carrier wrote: “Claim accepted as compensable. Benefits being paid.”

Since the filing of the Form AR-C, there has been no action taken by the Claimant to prosecute his claim.

As a result, on June 21, 2021, Respondents No. 1 filed a Respondents’ Motion to Dismiss, with the Commission. Said motion was accompanied by a Certificate of Service to the Claimant.

The Commission sent a Notice to the Claimant on June 23, 2021, apprising him of the motion, and a deadline for filing a written response.

There was no response from the Claimant.

Pursuant to a Hearing Notice dated July 15, 2021, the Commission notified the parties that the matter had been set for a hearing on Respondents No. 1's motion for dismissal of this claim due to a lack of prosecution. Said hearing was scheduled for on August 18, 2021, at 10:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

A hearing was in fact conducted on the Respondents No. 1's motion to dismiss as scheduled. Respondent No.1 appeared through their attorney. Counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, she moved that the claim be dismissed due to a lack of prosecution. The Claimant appeared and objected to his claim being dismissed. Specifically, the Claimant essentially confirmed that he continues to receive pain management benefits for his compensable back injury. However, the Claimant indicated that he needs sixty (60) days to obtain legal counsel in this matter.

In light of the Claimant's appearance at the hearing to object to his claim being dismiss; and because the Claimant has indicated he wishes to prosecute his claim, I find that Respondents No. 1's motion to dismiss should be and is hereby respectfully denied at this time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Arkansas Code Annotated. §11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed a Form AR-C for workers' compensation benefits. Since this time, the Claimant has failed to prosecute, or otherwise advance his claim.
3. On June 21, 2021, Respondents No. 1 filed with the Commission, a Respondents' Motion to Dismiss.
4. A hearing was held on the motion. The Claimant appeared and objected to the dismissal of his claim.

5. The Claimant has indicated that he will be ready to prosecute his claim within the next sixty (60) days.
6. Respondents No. 1's motion to dismiss is hereby respectfully denied.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to respectfully deny Respondents No. 1's motion for dismissal of this claim for workers' compensation benefits.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge