

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005983

JEREMY M. PARKER, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK, EMPLOYER

RESPONDENT

**CITY OF LITTLE ROCK/RISK MANAGEMENT
RESOURCES, CARRIER/TPA**

RESPONDENT

OPINION FILED JULY 16, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Jeremy Parker, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Jarred Parish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 24, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the June 24, 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' exhibit packet was identified as Respondents' Exhibit #1 and consisted of the First Report of Injury, the Form AR-N; the Form AR-C; the Form AR-2; the Respondents' Motion to Dismiss; the April 27, 2021, Correspondence to Claimant regarding Respondents' Motion and the Order granting the Motion to Withdraw; and the May 12, 2021, Notice of Hearing. Respondents' Exhibit #1 was admitted into evidence.

DISCUSSION

On or about May 15, 2020, Claimant alleged that he sustained an injury to his low back while working for the Respondent-Employer. On August 25, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of approximately May 15, 2020, and asserted his entitlement to workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "I slipped on a ladder exiting the roof of a house fire. Over extended (*sic*) back causing damage to L3 L4 spine disc." Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on August 25, 2020.

On August 30, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was denied as there was no evidence that Claimant sustained an injury in the course and scope of his employment.

On October 1, 2020, the Commission was notified via e-mail that Claimant had obtained an attorney to represent him in the present matter.

On February 25, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On March 1, 2021, the Commission sent a Notice to Claimant advising him of Respondents' motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

On April 5, 2021, Claimant's previous attorney filed a Motion to Withdraw as Counsel. The Commission entered an Order granting the motion on April 26, 2021. On April 27, 2021, the Commission sent a Notice to Claimant advising him of Respondents' motion and providing a new deadline for filing a written response. The Notice also included a copy of the Order granting counsel's Motion to Withdraw.

Pursuant to a Hearing Notice dated May 12, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for June 24, 2021, at 11:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A," Third Floor, 324 S. Spring Street, Little Rock, Arkansas. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that it had been more than ten (10) months since Claimant filed a Form AR-C with the Commission, and since that time, Claimant had not sought any type of *bona fide* hearing before the Workers' Compensation Commission. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702, and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been more than ten (10) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed without prejudice to the refile within the applicable time period.

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 Ark. Code Ann. § 11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant alleged that on or about May 15, 2020, he sustained an injury to his low back while working for the Respondent-Employer.
3. On August 25, 2020, Claimant filed a Form AR-C with the Commission seeking workers' compensation benefits in this matter.
4. Subsequently, on August 30, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim as there was no evidence that Claimant sustained an injury in the course and scope of his employment.
5. On February 25, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute
6. More than ten (10) months have passed since Claimant filed a form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
7. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
8. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE