

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002993

RICARDO PEREZ VEGA, EMPLOYEE

CLAIMANT

ABEL PEREZ, EMPLOYER

RESPONDENT

**FIRSTCOMP INSURANCE CO./MARKEL
SERVICE, INC., CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 3, 2021

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

Claimant, Mr. Ricardo Perez Vega, *pro se*, failed to appear at the hearing.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 2, 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 2, 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 Form AR-N; the May 22, 2020, Form AR-C; the July 14, 2020, Form AR-C; the November 9, 2020, Form AR-C; the Order Granting the Motion to Withdraw; the Respondents' Motion to Dismiss; the March 31, 2021, Correspondence to Claimant

regarding Respondents' Motion; and the April 23, 2021, Notice of Hearing. Respondents' Exhibit #1 was admitted into evidence.

DISCUSSION

On or about August 1, 2018, Claimant alleged that he sustained an injury to his low back while working for the Respondent-Employer. On May 22, 2020, Claimant's former counsel filed a Form AR-C with the Commission.¹ Per this form, Claimant asserted an accident date of approximately August 1, 2018, and asserted his entitlement to workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "Claimant was lifting boxes and started having back pain. Claimant sustained injuries to lower back and other whole body." Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on May 22, 2020.²

On June 10, 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, and his symptoms were due to a pre-existing condition.

On March 26, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On March 31, 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.

¹ Claimant's previous attorney re-filed the Form AR-C again on July 14, 2020, and on November 9, 2020.

² On February 26, 2021, Claimant's previous attorney filed a Motion to Withdraw as Counsel. The Full Commission entered an Order granting the motion on March 18, 2021.

Pursuant to a Hearing Notice dated April 23, 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 2, 2021, at 12:30 p.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 the claim was denied in its entirety and that no benefits were paid. Counsel further advised that it has been more than six (6) months since Claimant filed a Form AR-C with the Commission, and since that time, Claimant has 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 additional workers' compensation benefits. It has been more than six (6) 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 refiling 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 August 1, 2018, he sustained an injury to his low back while working for the Respondent-Employer.
3. On November 9, 2020, Claimant's former counsel filed a Form AR-C with the Commission seeking workers' compensation benefits in this matter.
4. Subsequently, on June 10, 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, and his symptoms were due to a pre-existing condition.
5. More than six (6) 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.
6. On March 26, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
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**