

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G606805

TIMOTHY L. PHELPS,
EMPLOYEE

CLAIMANT

HOT SPRINGS ADVERTISING &
PROMOTION COMMISSION, EMPLOYER

RESPONDENT NO. 1

ARKANSAS MUNICIPAL LEAGUE,
INSURANCE CARRIER/THIRD PARTY
ADMINISTRATOR (TPA)

RESPONDENT NO. 1

DEATH AND PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED JULY 29, 2022

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

Claimant, pro se, appeared at the hearing.

Respondents No. 1 represented by Ms. Mary E. Edwards, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held on Respondents No. 1's motion to dismiss for want of prosecution, on July 27, 2022, in the above-styled claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this matter should be dismissed due to the Claimant's failure to diligently prosecute it under the

provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was provided to all parties in the manner prescribed by law.

The record consists of the hearing transcript from July 27, 2022. Without objection, the Commission's file was made a part of the record. It has been incorporated by reference. Respondents No. 1 was admitted into evidence a Respondents' Non-Medical Exhibit Index consisting of nine (9) numbered pages. It was marked as Respondent Exhibit 1.

The Claimant, Mr. Timothy L. Phelps, was the sole witness during the hearing.

Background

The Claimant's former attorney filed a Form AR-C with the Commission in the above-styled claim on December 17, 2017. Per this document, the Claimant alleged he sustained an injury while working for the respondent-employer on September 14, 2016. Specifically, in the Form AR-C, the cause of the Claimant's injury and the part of his body being injured, was described as follows: "The Claimant was moving seats in the area when he fell injuring his left shoulder, back, both hips, left hand, right foot and other whole body." Counsel requested on behalf of the Claimant, both initial and additional workers' compensation benefits. Of importance, Claimant's counsel checked all the boxes for both benefits.

On or about September 27, 2016, Respondents No. 1 (the carrier) filed a Form AR-2 with the Commission confirming this as an accepted claim for a left knee injury. Hence, the carrier began paying benefits to and on behalf of the Claimant.

Subsequently, a dispute arose over the Claimant's entitlement to additional benefits, which caused the Claimant to request a hearing on the merits. Hence, the two central issues before the Commission included the Claimant's entitlement to wage-loss disability, and his entitlement to permanent and total disability benefits. A hearing was held regarding these issues on August 30, 2019. Per an Opinion issued on November 15, 2019, I made the following findings: "That the Claimant failed to prove by a preponderance of the evidence that he was rendered permanently and totally disabled by his compensable injury of September 14, 2016; and Claimant failed to prove he sustained any wage-loss disability." The Claimant appealed this decision.

Pursuant to an order filed June 25, 2020, the Full Commission found that the Claimant failed to establish by a preponderance of the evidence his entitlement to permanent and total disability benefits. However, they found that the Claimant proved he sustained wage-loss disability in the amount of 10%. Respondents No. 1 appealed this decision to the Arkansas Court of Appeals.

In the meantime, the Claimant's attorney filed a second Form AR-C with the Commission on December 18, 2020.

On February 24, 2021, the court affirmed the ruling of the Full Commission. No further appeals were taken. Respondents No. 1 accepted said ruling and paid appropriate benefits, with the last payment being made on January 10, 2022.

However, on April 7, 2022 the Claimant's attorney filed with the Commission, a motion to withdraw from representing the Claimant in this workers' compensation claim. The Full Commission granted the motion for Claimant's attorney to withdraw from representing him in this matter pursuant to an order entered on April 19, 2022.

Since the filing of the second Form AR-C in December 2020, there has been no activity on the part of the Claimant to prosecute his claim for workers' compensation benefits. Most importantly, the Claimant has not requested a hearing since the filing of the most recent Form AR-C, which was done roughly nineteen (19) months ago.

Therefore, on May 9, 2022, Respondents No. 1 filed with the Commission a Motion to Dismiss, with a Certificate of Service to the Claimant and Respondent No. 2. This document shows that Respondents No. 1 served a copy of the above and foregoing to the opposing parties via certified mail, with return receipt requested.

Subsequently, on May 12, 2022, I sent a letter to the Claimant informing him of Respondents No. 1's motion to dismiss, with a deadline for filing a written objection with the Commission.

There was no response from the Claimant.

On June 1, 2022, the Commission sent a Notice of Hearing to the parties by way of certified mail, to inform them that a hearing on Respondents No. 1's motion was scheduled for July 27, 2022, at 9:00 a.m., at the Commission, in Little Rock.

Yet, there was no response from the Claimant.¹

The dismissal hearing was in fact conducted on Respondents No. 1's motion to dismiss. Respondent No. 2 was excused from attending the hearing. The Claimant appeared at the dismissal hearing to agree with his workers' compensation claim being dismissed. He essentially stated that he has received all the benefits to which he is due

¹ The Claimant appeared at the hearing and verified on the record that he received both notices.

from his work-related injury of September 14, 2016. Counsel for Respondents No. 1 moved that both claims for this injury be dismissed due to the following reasons. Specifically, counsel noted that all appropriate benefits have been paid to the Claimant pursuant to the final order by the Arkansas Court of Appeals. In addition to this, counsel noted that no action has been taken by the Claimant to prosecute his claim since the court of appeals decision of February 2021. She also noted, among other things, that the Claimant has taken no action to prosecute his workers' compensation claim since the filing of the second Form AR-C. As a result, counsel requested that both claims be dismissed without prejudice under the provisions of Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13.

Discussion

Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 states:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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. (Effective March 1, 1982)

My review of the record shows that more than nineteen (19) months have passed since the filing of the second Form AR-C for the Claimant's accidental injury September 14, 2016. However, since this time, the Claimant has failed to make a request for a hearing before this Commission. Most notably, the Claimant agrees with this matter being dismissed.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that Respondents No. 1's motion to dismiss these claims should be granted pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13. This dismissal is without prejudice, to the refiling of this claim within the limitation period specified by law.

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 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Reasonable notice of the motion to dismiss and hearing was provided to all the parties in the manner prescribed by law.
3. The Claimant filed two Form AR-Cs for his September 14, 2016 work-related injury.
4. The evidence proves that the Claimant has failed abandoned his claim. He agrees with this matter being dismissed.
5. The evidence preponderates that Respondents No. 1's' motion to dismiss for want of prosecution is warranted.

6. That Respondents No. 1's motion to dismiss these claims is hereby granted pursuant Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, without prejudice, to the refiling within the specified limitation period.

ORDER

Based on the foregoing findings of fact and conclusions of law, the claims filed in this matter are dismissed without prejudice.

IT IS SO ORDERED.

Hon. Chandra L. Black
Administrative Law Judge