

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NOS.: H204489 & H2044490

BANG-OEN PRYOR, EMPLOYEE	CLAIMANT
BISMARCK SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN. WCT, INSURANCE CARRIER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JULY 24, 2023

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

Claimant is pro se in AWCC No. H204489, failed to appear for the hearing.

Claimant represented in AWCC No. H204490 by the Honorable Daniel A. Webb, Attorney at Law, Little Rock, Arkansas. Mr. Webb waived his appearance at the hearing.

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on July 12, 2023 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 claims should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the July 12, 2023, hearing and the documents contained therein. Also, both Commission’s files have been made a part of the record. It is hereby incorporated herein by reference. Respondents’ Exhibit 1 includes a Respondents’ Hearing Exhibit Index consisting of five numbered pages, excluding the cover letter. The Respondents’ Hearing Exhibit Index, excluding the cover page consists of nine numbered pages has been marked as Respondents’ Exhibit 2.

Discussion

It appears that the Claimant alleged a workplace injury to her wrist on or about October 1, 2021, which she did not promptly report to her employer. The Claimant did not file a Form AR-C or any document with the Commission that would be sufficient for establishing the filing of a claim. The claim number for this alleged injury is H204489. The Claimant is unrepresented in this claim.

Subsequently, the respondent-employer filed a Form AR-2 with the Commission on June 22, 2022 controverting the claim on the grounds: “DENIED – did not occur within course/scope of employment.”

Since this time, there has been no action taken by the Claimant to pursue her first alleged claim (H204489) for an injury to her wrist.

On May 5, 2023, the Claimant’s attorney filed with the Commission a claim for Arkansas workers’ compensation benefits by way of a Form AR-C. The claim number for this claim is H204490. Specifically, the Claimant alleged that she sustained injuries to her neck on April 27, 2022. The Claimant requested initial workers’ compensation benefits in the form of temporary total disability, medical expenses to include mileage, and attorney’s fees. In addition to these

benefits, the Claimant requested additional benefits only in the form of additional permanent partial disability benefits.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on June 22, 2022, wherein they denied compensability on the grounds of “... did not occur within the course/scope of her employment.”

Since this time and the filing of the Form AR-C, there has been no bona fide action on the part of the Claimant to prosecute this claim, or otherwise pursue this matter.

On May 5, 2023, the Respondents filed with the Commission a motion requesting that these claims be dismissed for a lack of prosecution. The Respondents notified the Claimant’s attorney of their motion for dismissal by way of mailing a copy of to him.

The Commission sent a letter-notice to the Claimant’s attorney and the Claimant’s last known address on May 10, 2023. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents’ motion.

Information received by the Commission from the United States Postal Service shows that they delivered this parcel of mail to the Claimant’s home. It bears the Claimant’s signature.

Yet, there has been no response from the Claimant.

However, the Claimant’s attorney contacted the Commission stating that he waived his appearance at the hearing in the claim relating to the Claimant’s neck, which is AWCC No. H204489. Counsel also stated that he does not object to the claim being dismissed regarding the Claimant’s alleged cervical spine injury. However, counsel specifically clarified that he does not represent the Claimant in the other claim.

Consequently, pursuant to a Hearing Notice dated June 2, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents’ motion to dismiss this claim

due to a lack of prosecution. Said hearing was scheduled for July 12, 2023, at 9:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

However, on July 11, 2023, the United States Postal Service informed the Commission that they were unable to find any delivery information on the above item for the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the hearing. Nevertheless, the Respondents appeared through their attorney. Counsel noted that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. Counsel further noted that there has been no attempt on the part of the Claimant to move forward with a hearing. Explicitly, counsel for the Respondents noted that the Claimant did not respond in a timely fashion during the prehearing process and her discovery requests. Therefore, counsel moved that both claims be dismissed under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13 without prejudice.

The record before me proves that the Claimant has failed to timely prosecute her alleged claims for workers' compensation benefits. The Claimant has failed to respond to the written notices of this Commission and has not objected to her first claim, AWCC H204489 being dismissed. However, with respect to the afore claim, there is no claim to dismiss. Regarding the Claimant 's second alleged claim (AWCC No. H204490) for a neck injury, her attorney has indicated that he does not object this claim being dismissed, without prejudice. Therefore, per Rule 099.13 of this Commission, AWCC No. H204490 is hereby dismissed, without prejudice to the refileing of it with the limitation period specified by law. In view of the foregoing finding, consideration for dismissal of the within claim under the provisions of Ark. Code Ann. §11-9-702 has been rendered moot.

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. The Respondents filed with the Commission, a motion to dismiss these claims for which a hearing was held.
3. The evidence preponderates that there is no claim to dismiss with respect to the first claim, which is AWCC No. H204489. However, the evidence preponderates that the Claimant has failed to timely prosecute her claim for workers' compensation benefits for an alleged neck injury, which is AWCC No. H204490.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss is hereby granted without prejudice pursuant to Commission Rule 099.13, to the refiling of it within the limitation period specified by law for AWCC No. H204490.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim for an alleged neck injury (which is AWCC No. H204490) is hereby dismissed. This dismissal is pursuant to Arkansas Workers' Compensation Commission Rule 099.13, without prejudice to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

Hon. CHANDRA L. BLACK
Administrative Law Judge