

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H103176

WILLIAM T. REDD, EMPLOYEE

CLAIMANT

COFFEE CREEK LAND CO., INC., EMPLOYER

RESPONDENT

**STONETRUST COMMERCIAL INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED DECEMBER 10, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Helena, Phillips County, Arkansas.

Claimant, Mr. William T. Redd, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Zachary Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 8, 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 December 8, 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 by reference.

DISCUSSION

Claimant alleged that he sustained an injury to his low back and leg August 4, 2020, while working for the Respondent-Employer. On April 5, 2021, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of August 4, 2020, and asserted

his entitlement to initial and additional workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "Lower back and leg pain from operating heavy equipment. Have had multiple flare ups of back and leg pain." Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on April 5, 2021.

On April 7, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.

On October 5, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On October 8, 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.

Pursuant to a Hearing Notice dated November 4, 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 December 8, 2021, at 12:00 p.m., at the Phillips County Justice Complex, Judge Wilson's Courtroom, 1804 Martin Luther King Drive, Helena, Arkansas. The Hearing Notice was mailed via Certified Mail and First-Class Mail to Claimant's address. United States Postal Service records indicated that the Hearing Notice sent via Certified Mail was not claimed or delivered. However, the First-Class Mail was not returned.

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 Claimant had not taken any action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since he filed the

Form AR-C. 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 eight (8) 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 he sustained an injury to his low back and leg on August 4, 2020, while working for Respondent-Employer.
3. On April 5, 2021, Claimant filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits in this matter.
4. Subsequently, on April 7, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.
5. On October 5, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. More than eight (8) 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