

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H105301

DALE W. RELINE,
EMPLOYEE

CLAIMANT

CHANNEL CONTROL MERCHANTS, LLC,
d/b/a DIRT CHEAP BUILDING SUPPLIES, LLC,
EMPLOYER

RESPONDENT

AMERICA ZURICH INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 29, 2022

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing.

Respondents represented by DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on April 13, 2022, in this 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 claim should be dismissed due to the Claimant's failure to promptly 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 tried on all the parties in the manner prescribed by law.

The record consists of the hearing transcript from April 13, 2022. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. The

Respondents introduced into evidence one exhibit, which consisted of twenty-nine (29) numbered pages. It has been marked as Respondents' Exhibit 1.

No testimony was taken at the hearing.

Procedural Background

The Claimant filed a Form AR-C with the Commission in the above-styled claim on June 29, 2021. Per this document, the Claimant alleged he sustained an injury while working for the respondent-employer on June 17, 2021. Specifically, the Claimant described the cause of his injury and the part of body being injured, in relevant part: "Heat-passed out ducts no A/C in the bldg. employer called ambulance sent to hosp. told could RTW June 21, 2021..." The Claimant asserted his entitlement to only initial workers' compensation benefits in the form of medical expenses.

On or about July 8, 2021, the Respondents filed a Form AR-2 with the Commission affirming this as an accepted compensable "medical-only" claim. The evidence before me strongly suggests that the Respondents have paid all the Claimant's related medical expenses, as he requested on the Form AR-C.

Since the filing of the Form AR-C in June 2021, there has been no activity on the part of the Claimant to prosecute his claim for workers' compensation benefits.

Hence, more than ten (10) months have elapsed since the Claimant filed his Form AR-C for workers' compensation benefits. Therefore, on February 2, 2022, the Respondents filed with the Commission a Respondents' Motion to Dismiss and Incorporated Brief in Support. The Respondents served a copy of the foregoing pleadings on the Claimant by depositing a copy thereof in the United States Mail.

Subsequently, on February 8, 2022, I sent a letter to the Claimant informing him of the motion, with a deadline for filing a written objection. Information received on February 23, 2022 by the Commission from the United States Postal Service shows that they were unable to locate any delivery information in their records for this parcel of mail.

The Claimant indicated to the Respondents that he does not wish to pursue this claim since the Respondents have satisfied his request for payment of his medical expenses.

On March 7, 2022, a Notice of Hearing was sent by certified mail to the parties letting them know that a hearing was scheduled for April 13, 2022, on the Respondents' motion to dismiss.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant did not appear at the hearing to object to his workers' compensation claim being dismissed. However, the Respondents' attorney appeared for the hearing. During the hearing, counsel essentially moved that the claim be dismissed because all appropriate benefits have been paid. Counsel also indicated that the Claimant is content with the remuneration of his medical expenses. Of note, the Claimant's grandmother (a former claims adjuster) indicated to the Respondents' attorney that the Claimant does not object to his claim being dismissed. However, the Claimant has not designated his grandmother as his representative. Nevertheless, counsel asked that this claim be dismissed without prejudice due to the foregoing reasons. He also raised the statute of limitations defense.¹

Discussion

The applicable law and Commission Rule are set forth below.

Specifically, Ark. Code Ann. §11-9-702 (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon

¹ Although the Respondents raised the statute of limitations defense during the hearing, this defense was not an issue before the Commission. As such, said defense has not been addressed herein this Opinion.

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 reads:

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 six (6) months have passed since the filing of the Form AR-C in this claim for workers' compensation benefits. However, since this time, the Claimant has failed to make a request for a hearing in this matter. The Claimant also failed to appear at the hearing to object to the dismissal of his claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim should be granted pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and Commission Rule 099.13. This claim is hereby dismissed without prejudice, to the refiling of it 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 dismissal hearing was tried on all the parties in the manner prescribed by law.
3. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is warranted.
4. That the Respondents' motion to dismiss is hereby granted pursuant Ark. Code Ann. §11-9-702 (Repl. 2012) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

ORDER

Based on the foregoing findings of fact and conclusions of law, this claim is dismissed without prejudice under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge