

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002559

JAMES RICE, EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE, INC., EMPLOYER

RESPONDENT

**LM INSURANCE CORPORATION/LIBERTY MUTUAL
GROUP, CARRIER/TPA**

RESPONDENT

OPINION FILED SEPTEMBER 9, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant, Mr. James Rice, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 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 (Repl. 2012) 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 September 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. Respondents' exhibit packet was identified as Respondents' Exhibit #1 and consisted of the First Report of Injury; a Form AR-2; a Form AR-2 Notice of Receipt; correspondence with Claimant regarding his hearing request; a September 16, 2020,

Notice of Hearing; a Preliminary Notice; September 23, 2020, e-mail communication from Claimant's counsel; Claimant's counsel's Request for Withdrawal dated November 4, 2020; a November 4, 2020, letter from the Clerk's Office regarding Counsel's Motion to Withdraw; Respondents' November 8, 2020, e-mail communication indicating they have no objection to Counsel's Motion to Withdraw; November 20, 2020, Order granting Motion to Withdraw; a letter to Claimant regarding Respondents' Motion to Dismiss; Respondent's Motion to Dismiss and Brief in Support of the Motion; communication from the Commission to Claimant regarding Respondents' Motion to Dismiss; and a May 21, 2021, Hearing Notice. Respondents' Exhibit #1 was admitted into evidence.

DISCUSSION

Claimant alleges that on April 22, 2020, he sustained an injury to his low back while working for the Respondent-Employer.

On May 11, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was denied as there was no clear medical justification that the injury occurred during the course and scope of employment.

Claimant was initially *pro se*, and on August 3, 2020, Claimant notified the Commission, via a handwritten letter, that he was requesting a hearing on his claim.

On September 21, 2020, the Commission received notice that Claimant had obtained counsel. Also, on September 21, 2020, Claimant filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits. Per this form, Claimant asserted an accident date of April 22, 2020, and asserted his entitlement to both initial and additional workers' compensation benefits. The cause of injury and part of the body injured was described as:

“Claimant was lifting heavy boxes when he felt a pain in his low back, injuring his low back and other whole body.”

On October 1, 2020, Claimant’s hearing request was withdrawn, and the matter was returned to the Commission’s general files.

Thereafter, Claimant’s counsel filed a Motion to Withdraw, which was granted by the Full Commission on November 20, 2020.

On April 23, 2021, Respondents filed with the Commission a Motion to Dismiss, a brief in support of the Motion, and a Certificate of Service to Claimant. On April 26, 2021, the Commission sent notice of the Motion to Dismiss to Claimant via First-Class Mail and Certified Mail to Claimant’s address. There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated May 21, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents’ Motion to Dismiss. Said hearing was initially scheduled for July 1, 2021, but was rescheduled for September 8, 2021, at 2:30 p.m., at the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. That communication was sent via First-Class Mail and Certified Mail to Claimant’s address. Information obtained by the Commission from the United States Postal Service demonstrates that the parcel was delivered on July 3, 2021, at 1:34 p.m. and a signature was obtained. There was no other response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents’ Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that Claimant requested a hearing (prior to being represented by counsel) in August of 2020. Once he obtained counsel, a Form AR-C was filed on September 21, 2020,

alleging a work injury on April 22, 2020. Since the filing of the Form AR-C in September of 2020, and the subsequent withdrawal of the hearing request in October of 2020, Claimant has not responded to inquiries or notices regarding his case, and he 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 Commission 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 approximately eleven (11) 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 since he withdrew his hearing request on October 1, 2020. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss 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 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant alleged that on April 22, 2020, he sustained an injury to his low back while working for Respondent-Employer.
3. On May 11, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.

4. On August 3, 2020, Claimant (*pro se*) filed a request for a hearing with the Commission. However, once Claimant obtained counsel, a Form AR-C was filed on September 21, 2020, and the prior hearing request was withdrawn on October 1, 2020.
5. Thereafter, Claimant's counsel's Motion to Withdraw was granted by the Full Commission on November 20, 2020.
6. On April 23, 2021, Respondents filed with the Commission a Motion to Dismiss.
7. More than eleven (11) months have passed since Claimant filed a Form AR-C with the Commission. However, since Claimant withdrew his hearing request in October of 2020, Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
8. 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.
9. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
10. 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.
11. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, 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 limitation period specified by law.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE