

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H401198

QUIENTON C. ROGERS,
EMPLOYEE

CLAIMANT

WARREN OIL COMPANY,
EMPLOYER

RESPONDENT

BERKLEY CASUATY CO., /BERKLEY
INDUSTRIAL COMP., INSURANCE
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED FEBRURARY 21, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in Forrest City, St. Francis County, Arkansas.

The Claimant, *pro se*, failed to appear for the dismissal hearing.

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

Statement of the Case

A hearing was held on February 14, 2025, in the above-referenced matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether this case 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 tried on all parties to their last known address, in the manner prescribed by law.

No testimony was taken.

The record consists of the transcript of February 14, 2025, hearing and the documents held therein. Commission's Exhibit 1 consists of four (4) pages, which has been marked accordingly,

and the Respondents introduced into evidence an exhibit consisting of eight (8) pages, and it was thus marked Respondents' Exhibit 1.

Background

The procedural history of this claim is as follows:

The Claimant's attorney filed a Form AR-C with the Commission on May 28, 2024, alleging that the Claimant sustained a compensable injury on February 12, 2024, while working for the respondent-employer. Per this document, the Claimant reported that he sustained a compensable injury to his right foot during a work accident. The claim information section of the Form AR-C shows that the Claimant requested only initial benefits. These benefits included a claim for temporary total disability compensation, temporary partial disability benefits, rehabilitation, medical benefits, and possibly benefits under Ark. Code Ann. §11-9-505 (a).

The Respondents' claims specialist filed a Form AR-2, with the Commission on February 20, 2023, controverting the claim in its entirety. At that time, the respondent-insurance carrier stated position included the following: "The employee was not engaged in any work activity when the incident occurred; the employee reported that he was taking a break when he jumped off the dock resulting in an injury; and the claim was not reported when it occurred and what he did was a safety violation."

There was no action whatsoever taken on the part of the Claimant to prosecute his claim or pursue.

However, on August 14, 2024, the Claimant's attorney filed a motion to withdraw from representing the Claimant in this claim. On August 30, 2024, the Full Commission entered an order granting the motion of Claimant's attorney to withdraw as counsel.

Since this time, the Claimant has not taken any action to pursue or resolve his claim.

Therefore, on December 4, 2024, the Respondents filed a Motion to Dismiss for Failure to Prosecute, with the Commission. The Respondents notified the Claimant of said motion pursuant to a certificate of service sent via the United States Postal Service on December 3, 2024.

Subsequently, on December 6, 2024, my office sent a letter-notice informing the Claimant of the Respondents' motion to dismiss, and a deadline of twenty (20) days for filing a written response. This letter was sent via first-class and certified mail. Information received by the Commission from the United States Postal Service confirms that they were unable to deliver this item to the Claimant because it was "unclaimed", and they were unable to forward it. As a result, on December 30, the Postal Service returned this notice to the Commission. However, the notice sent by first-class mail has not been returned to the Commission.

Per a Hearing Notice generated on January 3, 2025, the Commission notified the parties that this claim had been set for a hearing on the Respondents' motion to dismiss. Said dismissal hearing was scheduled for 12:30 p.m., at the St. Francis County Courthouse, in Forrest City, Arkansas. This hearing notice was sent via first-class mail and certified mail.

Information received from the Postal Service shows that this item was also "undeliverable" and went "unclaimed." Said notice was returned to the Commission on February 3, 2025. However, the notice sent via first-class mail has not been returned to the Commission. Based on the foregoing, the evidence preponderates that the Claimant received notice of the dismissal hearing.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear for the hearing. However, the Respondents appeared through their attorney.

The Respondents' counsel essentially argued that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, Counsel moved that this claim

be dismissed for failure to prosecute under Ark. Code Ann. §11-9-702, and Commission Rule 099.13.

Adjudication

Therefore, the statutory provision and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) states:

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 motion and after hearing, be dismissed without prejudice to the refileing of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Furthermore, 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)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim since the filing of the Form AR-C more than six (6) months ago; and nor has he resisted the motion to dismiss his claim despite having received notice of the dismissal hearing.

Here, the evidence preponderates that the Claimant has clearly failed to prosecute this claim for initial workers' compensation benefits. Furthermore, I am convinced that the Claimant has abandoned his claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for initial workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refiling of it within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on 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 Claimant's former attorney filed a Form AR-C in May 2024. Since this time, the Claimant has not requested a hearing or indicated that he wishes to pursue this claim for workers' compensation benefits.
3. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
4. Appropriate notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The evidence preponderates that the Respondents' motion to dismiss this claim for lack of prosecution is well founded, and should be hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is made pursuant to the provisions of Ark. Code

Ann. §11-9-702, and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge