

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: F212139

DANIEL L. ROTEN,
EMPLOYEE

CLAIMANT

ARKANSAS HIGHWAY & TRANSPORTATION DEPT.,
EMPLOYER

RESPONDENT NO. 1

PUBLIC EMPLOYEE CLAIMS DIVISION,
THIRD PARTY ADMINSTRATOR (TPA)

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED MARCH 17, 2022

Hearing before Administrative Law Judge Chandra L. Black in El Dorado, Union County, Arkansas.

Claimant represented by the Honorable Brian H. Ratcliff, Attorney at Law, El Dorado, Arkansas.

Respondents No. 1 represented by the Honorable Robert Montgomery, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the Honorable Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

Statement of the Case

A hearing was held on February 2, 2022 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of 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.

The Commission provided appropriate notice of the hearing to all parties, in the manner set by law.

No testimony was taken at the hearing.

The record consists of the transcript of the February 2, 2022 hearing and the documents contained therein. The entire Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Said file includes the transcripts of two prior hearings, which were held on July 13, 2017, and July 16, 2016, along with the corresponding opinions rendered by Former Administrative Law Judge Mark Churchwell, and ultimately the Full Commission. Respondents No. 1 introduced into evidence one exhibit (Respondent No. 1 Documentary Exhibit) consisting of eight (8) pages. It has been marked Respondent Exhibit 1.

Procedural History

On October 14, 2002, the Claimant sustained injuries to his left foot and lower left extremity while working for Respondents 1.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on October 24, 2002, accepting the claim as compensable.

Subsequently, the Claimant underwent surgical procedures to his left foot and lower left extremity, by Dr Larry Nguyen and Dr. Jason Stewart. The Claimant was assigned permanent impairment ratings for his injuries, which were accepted and paid by Respondents No. 1 pursuant to various requests by the Claimant for lump sum payments, which were approved by the Commission.

On December 16, 2015, Respondents No. 1 controverted the Claimant's entitlement to additional benefits for any permanent disability for his left foot injury. Specifically, Respondents No. 1 controverted the additional 10% permanent partial impairment rating to the Claimant's left foot assigned by Dr. Nguyen on September 29, 2015. Also, Dr. Nguyen recommended additional surgery to Claimant's left foot on December 1, 2015. As a result, Respondents No. 1 asked that the Claimant undergo an independent medical evaluation (IME) prior to any additional surgery

being performed, and that a review of the impairment rating be done to assess the correct impairment to his left foot. Therefore, on February 2, 2016, the Claimant underwent an IME by Dr. Robert Martin.

The Claimant's attorney requested a hearing for the determination of the extent of permanent and physical impairment. Said hearing request was made on February 29, 2016. A hearing was held before Former Administrative Law Judge Mark Churchwell on July 14, 2016 to determine the extent of permanent impairment to the Claimant's left foot. Per an opinion filed on September 2, 2016, Judge Churchwell found, among other things, that the Claimant sustained a 61% impairment to his foot. On December 21, 2016 the Full Commission affirmed and adopted this decision. No further appeals were taken.

On May 25, 2017 the Claimant was granted a change of physician by the Commission's Medical Cost Administrator, to switch from treating with Dr. Larry Nguyen, to treat with Dr. Gregory Troy Ardoin.

A second hearing was held before Former Administrative Law Judge Churchwell on July 13, 2017 for a determination of whether the Claimant sustained a compensable injury consequence injury to his left shoulder and arm as a result of fall due to his admittedly compensable left foot injury of October 14, 2002. Pursuant to an opinion filed by Judge Churchwell on August 29, 2017 he found that the Claimant sustained a compensable consequence injury to his left shoulder and arm. On January 5, 2018 the Full Commission affirmed and adopted the afore decision. No further appeals were taken from this decision.

On April 10, 2018, the Claimant's attorney wrote a letter to the Commission requesting a hearing on temporary and total disability. A pre-hearing telephone conference was scheduled for June 13, 2018. However, on the morning of the scheduled telephone conference, the Claimant's

attorney sent an e-mail to the Commission withdrawing his claim that Respondents had controverted temporary and total disability. Counsel essentially requested that the telephone conference be canceled, and the file be returned to the Commission's general files, which was done.

The Claimant's attorney wrote a letter to the Commission on November 9, 2018 requesting a hearing on the issues of permanent total disability, and medical treatment for the Claimant's shoulder injury. On January 16, 2019 a telephone conference was held with the parties and it was determined that discovery had not been completed in this matter. As a result, the claim was returned to the Commission's general files the following day.

Since January 2019, there has been no action whatsoever taken by the Claimant to prosecute this claim.

As a result, on November 15, 2021, Respondents No. 1 filed with the Commission, a motion to dismiss for want of prosecution. Said motion was accompanied by a certificate of service to the Claimant's attorney and counsel for the Trust Fund.

The Commission sent a Notice to the Claimant and his attorney on November 17, 2021, apprising them of the motion, and a deadline of December 9, 2021 for filing a written response to said motion. Information obtained by the Commission from the United Postal Service shows that this notice was delivered to an individual at the Claimant's home on January 3, 2022.

Per a Notice of Hearing dated December 28, 2021, the Commission informed the parties that this matter had been set for a hearing on Respondents No. 1's motion for dismissal of this claim due to a lack of prosecution. The Commission scheduled this case for a dismissal hearing on February 2, 2022, at 9:30 a.m., at the Union County Courthouse, in El Dorado, Arkansas.

Information received by the Commission from the United Postal Service shows that on January 8, 2022 this notice was delivered to the Claimant's last known address listed with the Commission.

A hearing was in fact conducted on the Respondents No. 1's motion to dismiss as scheduled. The Trust Fund waived its appearance at the hearing. The Claimant's attorney appeared at the hearing, but the Claimant did not show up for the hearing. Respondents No. 1 appeared through their attorney. Counsel for Respondents No. 1 essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, Respondents No. 1 moved that the claim be dismissed due to a lack of activity or request for a hearing since January 2019. The Claimant's attorney informed the Commission that he had no objection to a dismissal without prejudice pursuant to the rules cited by Respondents No.1's attorney.

Discussion

In the present matter, no Form AR-C has ever been filed in this case. Typically, a Form AR-C is the means for filing a "formal claim." See *Yearwood v. Wal-Mart Stores, Inc.*, 2003 AWCC 113, Claim No. F201311 (Full Commission Opinion filed June 17, 2003). See also *Sinclair v. Magnolia Hospital*, 1998 AWCC 409, Claim No. E703502 (Full Commission Opinion filed December 22, 1998) (a claim is "typically" filed via a Form AR-C). I recognize that other means exist to file a claim for Arkansas workers' compensation benefits other than a Form AR-C. However, I am unable to find any such document in the record/Commission's file that would constitute the filing of a claim for benefits in this matter.

Because no claim has ever been filed by the Claimant, I am compelled to find that there is no claim subject to dismissal pursuant to Respondents No.1's motion. Under these circumstances, I am compelled to respectfully deny the motion to dismiss.

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. A Form AR-C has never been filed in connection with this case.
3. No other document of record before the Commission constitutes a claim for workers' compensation benefits.
4. The motion to dismiss filed by Respondents No. 1 is respectfully denied because no claim exists to be subject to being dismissed.

ORDER

Pursuant to the findings of fact and conclusions of law set forth above, the motion to dismiss filed by Respondents No. 1 is hereby respectfully denied.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge