

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO.: G703536**

SHEILA SANDERS, Employee CLAIMANT

LEE COUNTY SCHOOL DISTRICT, Self-Insured Employer RESPONDENT

ARKANSAS SCHOOL BOARDS' ASSOCIATION
WORKERS' COMPENSATION TRUST, Carrier/TPA RESPONDENT

OPINION AND ORDER FILED NOVEMBER 15, 2021

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in St. Francis County, Arkansas.

Counsel for the Claimant: Honorable Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Counsel for the Respondents: Honorable Melissa Wood; Attorneys at Law, Little Rock, Arkansas.

The above-captioned matter came on for a hearing on September 3, 2021, with respect to the Respondents' Motion to Dismiss filed with the Commission on May 6, 2021. During preliminary discussions, the parties' respective exhibits were introduced into the record without objection. (TR 3-5) In addition, the Commission's file was deemed incorporated into the record without objection. (TR 5)

Upon presentation of her Motion to Dismiss filed on behalf of the Respondents', Counsel for the latter noted that this matter had been previously dismissed by the undersigned Administrative Law Judge by way of an Opinion and Order entered on April 27, 2021. (TR 6) Counsel for the Respondents went on to note that the dismissal was granted essentially upon agreement by the parties with respect to such, that the Claimant had filed an additional Form AR-C a mere three days later on April 30, 2021, and that such action was sanctionable pursuant to *Johnson v. Triple T Foods*, 55 Ark. App. 83, 929 S.W.2d 730 (1996). (TR 6-7)

Prior to calling the Claimant to the stand, her Counsel was afforded an opportunity to

reply to the statements made by Counsel for the Respondents. During such, *inter alia*, Counsel for the Claimant acknowledged that the previous dismissal Order entered herein was the result of a joint agreement between the parties, that the subsequent AR-C filing three days following the entry of said Order was partly for the purpose of tolling the Statute of Limitations, and that the Claimant anticipated assignment of a new claim number upon filing of an additional AR-C. (TR 8-12) Counsel for the Claimant also identified several potentially justiciable issues in the present matter, but conceded that a hearing with respect to such had never been requested. (*Id.*; and specifically, TR 12-13)

Testimony

Sheila Sanders

During direct examination, the Claimant testified that she continues to receive treatment with respect to her compensable injury of January 17, 2017, had seen Dr. Adametz for such the day prior to the hearing of September 3, 2021, and had received a steroid injection. (TR 15) In addition, the Claimant testified that she has not yet seen Dr. Abraham but wants to, does not want her claim dismissed, and desires a hearing with respect to her entitlement to additional benefits associated with this matter. (TR 16-17) Discussion of the Claimant's testimony upon cross-examination is not necessary for the findings of fact herein reached, nor is discussion of the subsequent exchange between the undersigned Administrative Law Judge and Counsels.

Documentary Evidence

The most pertinent documentary evidence herein reflects that the undersigned Administrative Law Judge entered an Order of Dismissal without prejudice in this matter on April 27, 2021, upon the parties' Joint Motion for such. (RX 1 at 1-2) On April 30, 2021, the Claimant filed an additional AR-C with respect to the present matter. (RX 1 at 3) The

Respondents followed shortly thereafter with yet another Motion to Dismiss filed on May 6, 2021. (RX 1 at 4-12)

Applicable Law

Ark. Code Ann. §§11-9-702(a)(4) and (b), in pertinent parts provide as follows:

(a)(4) 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 refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Also, Commission Rule 099.13, in pertinent part, states that:

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.

Adjudication

I am very well-acquainted with the statutory law and Commission Rule cited above with respect to the dismissal of claims and have also taken into account the Respondents' reference to a twenty-five-year-old case pertaining to potential sanctions concerning AR-C filings. I respectfully decline to apply such case herein, given that Counsel for the Claimant was very forthright during the hearing with respect to the additional AR-C filing of April 30, 2021, and the reasons for such. In addition, I cannot overlook the fact that the Claimant appeared in person for the hearing held on September 3, 2021, and testified that she desired a hearing on the merits of her claim with respect to pending justiciable issues. Accordingly, I specifically find that the Respondents' Motion to Dismiss should be and hereby is respectfully denied. Pre-hearing documents with respect to a hearing on the merits herein will be forthcoming from my office.

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The Respondents are ordered and directed to pay the court reporter's fee within thirty days of billing for such.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge