

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H306164

WHITNEY SCRUGGS, EMPLOYEE

CLAIMANT

EXPRESS SERVICES, INC., EMPLOYER

RESPONDENT

ATU INSURANCE/SEDGWICK CMS, CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 23, 2024

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Arkansas on October 15, 2024.

Claimant is pro-se and appeared at the hearing.

Respondents are represented by their attorney, Jarrod S. Parrish, of Little Rock, Arkansas, who appeared on their behalf.

STATEMENT OF THE CASE

A hearing was held in the above styled matter on October 15, 2024, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Ann. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant did appear at the time of the hearing and testified that he wished to pursue his claim. A First Report of Injury was filed on or about September 21, 2023, and it provided that the claimant was injured on September 11, 2023, when the claimant slipped and fell and fractured his ribs and sternum. An AR – 2 was filed on September 25, 2023, and it provided that the first compensation check in the amount of \$560.00 was issued on September 19, 2021. A Form AR – C was filed on February 13, 2024, by claimant's attorney at the time, which provided that the claimant had injured multiple body parts including without limitation, the back, tailbone, ribs, toes, face, and fingers.

Claimant's attorney was allowed to withdraw on July 22, 2024. A Motion to Dismiss for Failure to Prosecute was then filed on August 20, 2024.

The respondents contend that the claimant has taken no additional action to prosecute his claim and that consequently, they filed a Motion to Dismiss for Failure to Prosecute on August 20, 2024, requesting that the matter be dismissed for lack of prosecution pursuant to Commission Rule 099.13 and A.C.A. 11-9-702. The claimant admitted that he had not filed a response to the Motion to Dismiss but stated that he intended to pursue his claim.

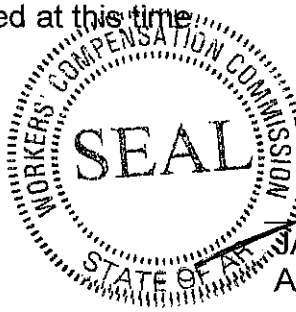
In regard to the issue of dismissing the claim per the respondents' Motion to Dismiss, A.C.A. 11-9-702 (a) (4) provides that if within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may** (emphasis added) upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitations periods specified in subdivisions (a) (1) – (3) of this section. Here the claimant appeared at the time of the hearing and unequivocally stated that he intended to pursue his claim in regard to his injuries. He was instructed to contact the Legal Advisor Division of the Workers' Compensation Commission. Based upon the claimant's appearance, his statement that he intended to pursue his claim, and the fact that the claimant's attorney was allowed to withdraw, it is found that there is no basis to dismiss the claim at this current time.

It is noted that appropriate notice was provided to the claimant notifying him of the hearing and that he was in fact present.

ORDER

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of respondent's attorney and the testimony of the claimant, there is no alternative but to find that that this matter should not be dismissed at this time.

IT IS SO ORDERED.



James D. Kennedy

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE