

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO.: H109560

DONNA SHIELDS,
EMPLOYEE

CLAIMANT

LITTLE ROCK SCHOOL DISTRICT/ HALL HIGH SCHOOL,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED MAY 17, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing.

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

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on April 13, 2022 in the above-referenced claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (d) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by law.

The record consists of the April 13, 2022 hearing transcript. Also, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. The

Respondents introduced into evidence a Respondents' Hearing Exhibit Index consisting of six (6) numbered pages; it was marked Respondents' Exhibit 1.

No testimony was taken at the hearing.

Background

The Claimant filed a Form AR-C with the Commission on December 7, 2021 asserting her entitlement to workers' compensation benefits. She attached to the Form AR-C, a sheet of paper containing handwritten notes wherein she described her two alleged work-related incidents. Specifically, the Claimant stated that she tripped and fell twice, over a pipe causing multiple bodily injuries. The Claimant wrote in this document that the Respondents sent her to the company doctor, but he returned her to work although she was still hurting. According to the Claimant, she was unable to return to work due to ongoing pain on the right side of her ribs, chest, right elbow, right knee, and right finger. The Claimant alleged an accident date of November 1, 2021. Of note, the Claimant did not check any of the boxes for a claim of initial or additional workers' compensation benefits.

On or about December 8, 2021, the Respondents filed a Form AR-2 with the Commission denying the within claim. Specifically, the claims adjuster wrote: "Denied, positive drug screen."

Since the filing of the Form AR-C more than six (6) months ago, the Claimant has not requested a hearing on the merits of her claim for workers' compensation benefits.

Therefore, on February 18, 2022 the Respondents filed a letter motion to dismiss this claim due to a lack of prosecution by the Claimant. Respondents provided the Claimant with a copy of the letter for dismissal by way of depositing a copy of the foregoing request in the United States Mail.

On February 28, 2022 the Commission sent a notice to the Claimant of the Respondents' motion to dismiss, with a deadline of March 21, 2022 for filing a written objection to the motion.

Tracking information received by the Commission from the United States Postal Service shows that on March 2, 2022, the notice was delivered to the Claimant's home and left with an individual.

Yet there was no response from the Claimant.

Therefore, on March 28, 2022 the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for April 13, 2022 on the Respondents' motion to dismiss.

Tracking information received by the Commission from the United States Postal Service shows that on March 30, 2022, the notice regarding the dismissal hearing was delivered to the Claimant's home and left with an individual.

Still, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing to object to her claim being dismissed. Nevertheless, the Respondents' attorney essentially asked that the claim be dismissed because there has not been a hearing request made by Claimant since the filing of the claim. Counsel asked that the claim be dismissed under both Rule 099.13 and Ark. Code Ann. §11-9-702.

Discussion

In that regard, the applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (d) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice

to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 provides, in relevant part:

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)

My review of the evidence shows that the Claimant has not requested a hearing since the filing of her claim for workers' compensation in December 2021. She failed to respond to the notices of this Commission and did not appear at the hearing to object to the dismissal. Considering the foregoing, I am persuaded to conclude that the Claimant has abandoned her claim for workers' compensation benefits.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is warranted under the provisions of Rule 099.13 of this Commission. Said dismissal is without prejudice, to the refiling of this claim within the limitation period specified by law.

Because of this finding, the issue of whether the claim should also be dismissed under Ark. Code Ann. §11-9-702 (d) (Repl. 2012) has been rendered moot and will not be addressed.

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. The Claimant filed a claim for workers' compensation benefits in December 2021. Since this time the Claimant has failed to request a hearing.
3. The Respondents filed a letter motion to dismiss said claim in February 2022.
4. The parties were provided reasonable notice of the motion to dismiss and hearing thereon. However, the Claimant failed to object to her claim being dismissed and she did not appear at the dismissal hearing.
5. The evidence preponderates that the Respondents' motion to dismiss for want of prosecution is warranted.
6. That the Respondents' motion to dismiss is hereby granted pursuant to Commission Rule 099.13 without prejudice, to the refiling of the claim within the specified limitation period.
7. The issue of whether this claim should be dismissed under Ark. Code Ann. §11-9-702(d) (Repl. 2012) has been rendered moot in light of the above findings.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge