

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H004357

TIMOTHY "TIM" SIMMONS,
EMPLOYEE

CLAIMANT

X-HOG LOGISTICS, LLC,
EMPLOYER

RESPONDENT

GUARD INSURANCE COMPANIES,
CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 30, 2021

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

Claimant, *pro se*, failed to appear.

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 17, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine 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.

Appropriate notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the November 17, 2021, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

BACKGROUND

On June 23, 2020, the Claimant was involved in a single vehicle motor vehicle accident within the course and scope of his employment with respondent-employer, X-Hog Logistic, LLC.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on July 10, 2020, wherein they accepted compensability of the claim.

On April 21, 2021, the Respondents' attorney sent an e-mail to the Commission stating that the parties had reached a settlement agreement. At that time, counsel also filed the proposed settlement documents with the Commission.

The Commission sent a Joint Petition Hearing Notice to the parties on April 29, 2021 setting the claim for a settlement hearing. Said hearing was scheduled for May 19, 2021 at 10:30 a.m. at the Arkansas Workers' Compensation Commission, in the Little Rock. It appears that the hearing was held in abeyance pending receipt of child support information.

Subsequently this matter was scheduled for a Joint Petition Hearing via Zoom for July 8, 2021. However, the hearing was canceled because the Claimant failed to return the original documents to the Commission.

Since that time, the Claimant has failed to return said documents to the Commission. He has also failed to take any action to further his claim or otherwise resolve it.

Therefore, the Respondents filed a motion to dismiss this claim with the Commission on August 23, 2021, with Certificate of Service to the Claimant.

I sent the Claimant a letter by certified mail on August 24, 2021 giving him 21 days to respond to the Respondents' motion. The Claimant signed for delivery of the letter on August 26, 2021. However, there was no response from the Claimant.

The Notice of Hearing was mailed to the parties on October 19, 2021. At that time, the case was set for a hearing on November 17, 2021, at the Arkansas Workers' Compensation Commission, in Little Rock. However, the Notice of Hearing was returned to the Commission marked as "unclaimed."

A hearing was in fact held on the Respondents' motion for dismissal of this claim. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney. Respondents moved that the claim be dismissed for a lack of prosecution.

DISCUSSION

The applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702(d) 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 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)

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 a document in the record/Commission’s file that would constitute the filing of a claim for benefits. Nor has the Claimant ever asked for a hearing.

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’ motion. As a result, the Respondents’ motion to dismiss is hereby respectfully denied.

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. A Form AR-C has never been filed in this matter.
3. No other document before the Commission in this claim constitutes the filing of a claim.
4. Respondents’ motion to dismiss is denied because no claim exists to be subject to dismissal.

ORDER

Based upon the foregoing findings of fact and conclusions of law, I have no alternative but

to deny the Respondents' motion for dismissal because no claim was ever filed by the Claimant to be subject to dismissal.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge