

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007622

JULIET SKALESKI, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., EMPLOYER	RESPONDENT
TYNET CORPORATION, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 17, 2021

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing at the hearing.

Respondents were represented by Mr. Scott Zuerker, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On June 16, 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 pursuant to Ark. Code Ann. §11-9-702(a)(4) (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the transcript of the June 16, 2021, hearing and the documents contained therein.

DISCUSSION

The Claimant alleged that she sustained an injury on September 23, 2020, while working for the respondent-employer. She filed a Form AR-C with the Commission on October 9, 2020. Per the Form AR-C, the Claimant gave the following details as being the cause of her injury:

“Chronic left foot pain in the great to region towards the middle of the arch caused by repetitive trauma and overuse/right side neck and shoulder pain caused by excessive and repetitive lifting of heavy objects.” The Claimant checked all the boxes for initial workers’ compensation benefits.

The Respondents filed a Form AR-2, with the Commission on October 19, 2020, controverting the claim. Specifically, they denied the claim stating: “The condition for the left foot, right shoulder and neck did not arise out of or occur in the course and scope of employment.”

Since the filing of the Form AR-C in October 2020, the Claimant has not requested a hearing, or in any manner attempted to resolve her claim.

Subsequently, the Respondents filed a Motion to Dismiss due to a lack of prosecution, with the Commission on or about April 14, 2021, with a Certificate of Service to the Claimant.

The Commission sent a Notice to the Claimant’s last known address, on April 16, 2021, letting her know of the Respondents’ Motion, and a deadline of May 7, 2021, for filing a written response. Information received by the Commission from the United States Postal Service shows that they delivered this item to the Claimant on April 26, 2021. However, there was no response from the Claimant.

Therefore, in a Hearing Notice dated May 11, 2021, the Commission notified (by way of Certified Mail) the parties that the matter had been set for a hearing on the Respondents’ Motion to Dismiss. This hearing was scheduled for June 16, 2021, at 9:30 a.m., in Little Rock, at the Arkansas Workers’ Compensation Commission. Information received by the Commission from

the United States Postal Service shows that they delivered this item to the Claimant on May 17, 2021.

Still, there was no response from the Claimant.

A hearing was in fact conducted on Respondents' Motion to Dismiss. The Respondents appeared for the hearing through their attorney. However, the Claimant did not appear at the hearing. Counsel for the Respondents' attorney essentially renewed their motion to dismiss this claim pursuant to Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13.

ADJUDICATION

There are two provisions for dismissal of claims: Specifically, Ark. Code Ann. §11-9-702(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.

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)

My review of the evidence shows that the Claimant has had the opportunity to pursue her claim for initial workers' compensation benefits but has failed to do so. Hence, the Claimant has failed to request a hearing on the merits or otherwise pursue this matter. Reasonable notice of the dismissal hearing was given to the Claimant in the manner prescribed by law. However, the Claimant failed to respond to the Commission's Notices and did not appear at the scheduled hearing. Nor has the Claimant objected to the dismissal of her claim.

Therefore, after careful consideration of the evidence presented, I find the Respondents' Motion to Dismiss to be well taken. Therefore, pursuant to Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13, this claim is hereby dismissed without prejudice to the refiling within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I 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 the within claim.
2. The Claimant filed a Form AR-C, with the Commission on October 9, 2020, alleging that she sustained work-related injuries on September 23, 2020.
3. Since this time, the Claimant has failed to request a hearing in this matter.

4. On April 14, 2021, the Respondents filed a Motion to Dismiss with the Commission.
5. The Claimant has had reasonable opportunity to pursue this claim for initial benefits, but no action has been taken by the Claimant in furtherance of her claim. Hence, the Claimant has failed to prosecute her claim.
6. The Claimant failed to respond to the Commission's written Notices and did not appear at the dismissal hearing to object to her claim being dismissed.
7. That Respondents' Motion to Dismiss is hereby granted under the provisions of Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13, to the refiling of the claim within the limitation period specified by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for initial benefits in its entirety. This dismissal is pursuant to Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

IT IS SO ORDERED.

Chandra L. Black
ADMINISTRATIVE LAW JUDGE