

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H203233

DEJA SMITH,
EMPLOYEE

CLAIMANT

POLYETHYLENE CONTAINERS, INC.,
EMPLOYER

RESPONDENT

FEDERATED MUTUAL INSURANCE COMPANY,
INSURANCE CARRIER/ THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED JULY 24, 2023

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

Claimant represented by the Honorable Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas. Mr. Peoples waived his right to participate in the hearing.

Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on July 12, 2023 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 (d) (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the July 12, 2023, hearing and the documents contained therein. Also, the entire Commission's file has been made a part of the record. It is

hereby incorporated herein by reference. The Respondents' Hearing Exhibit consisting of thirteen pages was marked as Respondents' Exhibit 1.

Discussion

On August 2, 2022, the Claimant filed with the Commission a claim for Arkansas workers' compensation benefits by way of a Form AR-C. Specifically, the Claimant alleged that she sustained injuries to her left hand on April 15, 2022 while performing employment duties for the respondent-employer. The Claimant requested additional workers' compensation benefits in the form of temporary total disability, temporary partial disability, additional permanent partial disability benefits, additional medical expenses, rehabilitation, and attorney's fees.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on May 9, 2022, wherein they accepted compensability on the claim.

Since the filing of the Form AR-C, there has been no bona fide action on the part of the Claimant to prosecute her claim for workers' compensation benefits, or otherwise pursue a resolution to this matter.

On May 1, 2023, the Respondents filed with the Commission a Motion to Dismiss and Incorporated Brief in Support requesting that the claim be dismissed for a lack of prosecution. The Respondents notified the Claimant's attorney of their motion for dismissal by way of mailing a copy of it to her attorney via the United States Postal Service.

The Commission mailed a letter notice to the Claimant's attorney and to her last known address on May 3, 2023. Said letter was sent by first class mail and certified mail. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents' motion. However, the United States Postal Service informed the Commission that they were unable to find any delivery information in their records for this item of mail.

Of significance, on May 3, 2023, the Claimant's attorney wrote the following in an e-mail to the Commission, "Claimant will not oppose dismissal, provided it is without prejudice. I would ask to be excused from appearance at any hearing on the Motion."

Therefore, pursuant to a Hearing Notice dated June 6, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for July 12, 2023, at 10:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Respondents appeared through their attorney.

Counsel noted that the Claimant has failed to timely prosecute her claim for workers' compensation benefits. Counsel further noted that there has been no attempt on the part of the Claimant to move forward with a hearing. He also pointed out that the Claimant does not oppose the claim being dismissed without prejudice. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice.

The record before me proves that the Claimant has failed to timely prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since the filing of the Form AR-C in August 2022. The Claimant does oppose to the claim being dismissed without prejudice. However, if the Claimant intends to pursue her claim at a later date, she has sufficient time to refile it with the Commission before the statute of limitations has run on it. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, without prejudice to the refileing of it with the limitation period specified by law.

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 Respondents filed with the Commission, a motion to dismiss this claim for which a hearing was held.
3. The evidence preponderates that the Claimant failed to timely prosecute her claim for workers' compensation benefits and does not oppose to it being dismissed without prejudice. Hence, the Claimant has not requested a hearing since the filing of the Form AR-C, which was done almost a year ago.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss is hereby granted, *without prejudice*, pursuant to Arkansas Code Ann. §11-9-702 and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Code Ann. 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge