

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G904553

LARRY SMITH, EMPLOYEE

CLAIMANT

**GOODWILL INDUSTRIES OF ARKANSAS
INC., EMPLOYER**

RESPONDENT

**ATA WORKERS' COMP SI TRUST/RISK
MANAGEMENT RESOURCES, CARRIER/TPA**

RESPONDENT

OPINION FILED JULY 15, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Larry Smith, *pro se*, appeared at the hearing.

Respondents were represented by Mr. Jarrod Parish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 24, 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 had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the June 24, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents' exhibit packet was identified as Respondents' Exhibit #1 and consisted of the First Report of Injury; the Form AR-C; the Form AR-2; Risk Management Resources' correspondence to the Commission; Claimant's previous attorney's correspondence with Claimant regarding the Motion to Dismiss; the Commission's

correspondence with Claimant’s previous attorney regarding the Motion to Dismiss; a Motion to Withdraw by Claimant’s previous attorney; correspondence from the Commission to Claimant regarding the Motion to Withdraw; correspondence from the Commission to the parties regarding the Motion to Dismiss; a March 23, 2021, an Order granting the Motion to Withdraw; Claimant’s correspondence with the Commission requesting a hearing on his claim; correspondence from the Commission to the parties regarding the Order granting the Motion to Withdraw; an April 15, 2021, Order holding the Motion to Dismiss in abeyance; and the May 12, 2012, Notice of Hearing. Respondents’ Exhibit #1 was admitted into evidence.

DISCUSSION

On July 30, 2018, Claimant allegedly suffered a compensable injury to his right elbow while working for Respondent-Employer. On July 16, 2019, Claimant’s previous counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of July 30, 2018, and asserted his entitlement to all potential workers’ compensation benefits. In the Form AR-C, Claimant’s cause of injury was described as follows, “Jerking on stuck clothes bailer, injured right elbow.”

Respondent-Insurance-Carrier filed a Form AR-2 with the Commission on July 22, 2019. The carrier accepted the claim and paid some benefits.

On February 5, 2021, Respondents filed a letter Motion to Dismiss requesting dismissal for failure to prosecute. Claimant’s previous attorney filed an objection to Respondents’ letter Motion to Dismiss on February 9, 2021. On February 24, 2021, Claimant’s previous attorney filed a Motion to Withdraw, which was granted by the Commission on March 23, 2021.

On March 25, 2021, the Commission sent a Notice to Claimant advising him of Respondents' motion and a deadline for filing a written response, along with a copy of the Order to Withdraw.

On April 14, 2021, Claimant responded via letter to the Commission, requesting a hearing and indicating that he would be representing himself at a hearing. As a result, the Commission entered an Order on April 15, 2021, holding Respondent's Motion to Dismiss in abeyance and setting forth deadlines for filing of the parties' prehearing questionnaires. Claimant failed to file a prehearing questionnaire with the Commission; thus, pursuant to a Hearing Notice dated May 12, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for lack of prosecution. Said hearing was scheduled for June 24, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A," Third Floor, 324 S. Spring Street, Little Rock, Arkansas. United States Postal Service records indicated that the Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. The Certified mail was returned "unclaimed." There was no other response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' request for dismissal. At the time of the hearing, Claimant appeared without legal counsel. Claimant testified that he objected to the request for dismissal of his claim and requested thirty (30) days to find an attorney to represent him. Respondents appeared through their attorney and asked that the claim be dismissed without prejudice for failure to prosecute.

With respect to the Motion to Dismiss, I find that Respondents' Motion should be respectfully denied at this time based on Claimant's appearance at the hearing and objection to the

dismissal of his claim. Claimant was cautioned that after the thirty (30)-day time frame, the matter would be set for a prehearing telephone conference in preparation for a full hearing.

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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 30, 2018, Claimant allegedly suffered an injury to his right elbow while working for Respondent-Employer.
3. On July 16, 2019, Claimant's previous counsel filed a Form AR-C with the Commission seeking workers' compensation benefits in this matter.
4. On July 22, 2019, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The carrier accepted the claim and paid some benefits.
5. Respondents filed a letter Motion to Dismiss requesting dismissal for failure to prosecute on February 5, 2021.
6. A hearing on the Motion to Dismiss was held on June 24, 2021, where Claimant appeared and objected to the Respondents' letter Motion to Dismiss.
7. Respondents' Motion to Dismiss for lack of prosecution should be, and is respectfully, denied. Claimant has thirty (30) days to find an attorney and pursue his claim. Thereafter, the matter will be set for a prehearing telephone conference in preparation for a full hearing.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to deny the request for dismissal of this claim for workers' compensation benefits, arising out of Claimant's alleged July 30, 2018, injury.

SMITH – G904553

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE