

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H100778

CASSONDRA STEPP, EMPLOYEE	CLAIMANT
ADP TOTALSOURCE MI XXX, INC., d/b/a THE CROSSING AT MALVERN, INC., EMPLOYER	RESPONDENT
NEW HAMPHIRE INSURANCE COMPANY, INSURANCE	RESPONDENT
HELMSMAN MANAGEMENT SERVICES LLC, THIRD PARY ADMINSTRTOR/TPA	RESPONDENT

OPINION FILED JANUARY 19, 2022

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

Claimant, pro se, did not appear.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 12, 2022, 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 (Repl. 2012) 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 January 12, 2022, hearing and the documents contained therein. Respondents introduced into evidence one exhibit consisting of twenty-six

(26) pages. It was marked as Respondents' Exhibit 1. The entire Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

BACKGROUND

On April 7, 2021, the Claimant attorney filed a Form AR-C with the Commission alleging that the Claimant sustained a compensable injury in the course and scope of her employment with the respondent-employer, on December 23, 2020. Counsel briefly described the cause of injury and the part of body injured as follows: "Claimant was getting a resident coffee. When she turned around the Claimant hit the counter sustaining injuries to her left knee and other whole body." Per this document, the Claimant requested both initial and additional workers' compensation benefits.

The Respondents filed a Form AR-2 with the Commission on January 21, 2021, wherein they controverted compensability of this claim. Specifically, their reason for controverting this claim was: "Injury is a pre-existing condition." However, the Third-Party Administrator filed a Form 4 with the Commission on March 12, 2021, showing that a payment had been made for medical expenses (\$578.88), and other related expense (\$168.00) for a grand total of \$746.88.

On June 5, 2021, the Claimant's attorney filed a Motion to Withdraw, with the Commission. The Full Commission entered an Order on July 17, 2021, granting the motion for the Claimant's attorney to withdraw from representing her in this claim.

Since the filing of the Form AR-C, there has been no action on the part of the Claimant to prosecute or resolve her claim for workers' compensation benefits.

Therefore, the Respondents filed a Respondents' Motion to Dismiss With or Without Prejudice, and a Respondents' Brief in Support of Motion to Dismiss With or Without Prejudice on November 1, 2021, with the Commission along with a Certificate of Service to the Claimant.

I sent the Claimant a letter by Certified Mail on November 2, 2021 giving her until November 23, 2021 to respond to the Respondents' motion.

However, there was no response from the Claimant.

The Notice of Hearing was mailed to the parties on November 30, 2021. At that time, the case was set for a hearing on January 12, 2022, at the Arkansas Workers' Compensation Commission, at its Little Rock location. Information from the United States Postal Service show that the Claimant signed for delivery of the notice on December 2, 2021.

Still, there was no response from the Claimant.

A hearing was in fact held on the Respondents' motion for dismissal of this claim. The Claimant did not appear at the hearing. However, the Respondents appeared through their attorney. Counsel essentially moved that this claim be dismissed due to a lack of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, with or without prejudice.

DISCUSSION

A review of the evidence shows that the Claimant has had a chance to pursue this case, but she has failed to do so. The Claimant also failed to respond to the written notices of this Commission and did not appear at the scheduled hearing to object to the dismissal of her claim. Moreover, the Claimant has not requested a hearing on her claim since the filing of the Form AR-C, which was done well over six months ago. Hence, the evidence before me proves that the Claimant has abandoned her claim for workers' compensation benefits. Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that Respondents' motion for dismissal of the within claim should be granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13. As a result, this claim is hereby respectfully dismissed without prejudice, to the refiling of it within 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. Claimant's former attorney filed a Form AR-C for benefits with the Commission in this matter on April 7, 2021.
3. Since this time, the Claimant has not requested a hearing with respect to her claim for workers' compensation benefits. Hence, more than six (6) months have passed since the filing of this claim and no bona fide request for a hearing has been made by the Claimant.
4. On November 1, 2021, the Respondents filed with the Commission, a Respondents' Motion to Dismiss With or Without Prejudice, accompanied by a Brief in Support of Motion to Dismiss.
5. A hearing was held on the motion after proper notice of the hearing was had on all the parties. However, the Claimant failed to appear at the hearing and has not objected to her claim being dismissed. Moreover, the Claimant has fail to respond to the written notices of this Commission.
6. The evidence preponderates that the dismissal for a lack of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refileing of the claim within the limitation period specified by law.

ORDER

Based on the foregoing findings of fact and conclusions of law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, this claim is hereby respectfully dismissed, without

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prejudice, to the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge