

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G808154

CLAYTON L. STOLL, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK, EMPLOYER

RESPONDENT

**CITY OF LITTLE ROCK/RISK MANAGEMENT
RESOURCES, CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 20, 2021

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

Claimant, Mr. Clayton L. Stoll, *pro se*, failed to appear at the hearing.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 28, 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 April 28, 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. A United States Postal Service return receipt for the hearing notice sent via Certified Mail to Claimant was marked as Commission's Exhibit #1 and was made a part of the record. Respondents' exhibit packet was made a part of the record and marked as Respondents' Exhibit #1. It consisted of the First Report of Injury Form, the Form AR-

C, the Change of Physician Order, the Amended Form AR-2, the Motion to Dismiss, the correspondence to Claimant regarding Respondents' Motion to Dismiss, and the correspondence to Claimant regarding the Hearing Notice.

DISCUSSION

On December 10, 2018, Claimant filed a Form AR-C with the Commission. Per this form, Claimant alleged that he sustained a compensable injury to his left shoulder, right knee, and right thumb on October 29, 2018, while working for Respondent-Employer. Specifically, the following description was stated for Claimant's accidental injury: "Fall, Left Shoulder, Right Knee, Right Thumb." Per the Form, Claimant asserted his entitlement to a change of physician.

On December 12, 2018, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was initially accepted as a medical only claim.

On December 18, 2018, a Change of Physician Order was entered approving a one-time change of physician from Dr. Kirk Reynolds to Dr. Charles Pearce.

Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on December 10, 2018.

Therefore, on February 25, 2021, Respondents filed a Motion to Dismiss for failure to prosecute and a Certificate of Service to Claimant. On March 1, 2021, the Commission sent a Notice to Claimant advising him of Respondents' Motion to Dismiss and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated March 26, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for failure to prosecute. Said hearing was scheduled for April 28, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room "B," 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. A return receipt showed that the Certified Mail was delivered on March 29, 2021, at 10:02 a.m., and a signature was obtained. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on the Respondents' Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing. At the hearing, Respondents' attorney advised that the carrier had accepted the claim and had paid medical and indemnity benefits; that on April 25, 2019, Claimant reached maximum medical improvement and was given a zero percent (0%) impairment rating for his back injury; that on April 1, 2020, Claimant reached maximum medical improvement and was given a ten percent (10%) impairment rating for his thumb injury; and that Respondents had accepted and paid the rating for Claimant's thumb injury. Lastly, Counsel advised that since the December 10, 2018, filing of the Form AR-C, Claimant had failed to request a hearing or take any further action to pursue his claim for workers' compensation benefits. As such, counsel requested that the motion be granted.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been more than two (2) years since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed and/or refused to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and

Commission Rule 099.13, this claim for benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

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 December 10, 2018, Claimant filed a Form AR-C with the Commission. Per this form, Claimant alleged that he sustained a compensable injury to his left shoulder, right knee, and right thumb on October 29, 2018, while working for Respondent-Employer.
3. On December 12, 2018, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was initially accepted as a medical only claim.
4. On December 18, 2018, a Change of Physician Order was entered approving a one-time change of physician from Dr. Kirk Reynolds to Dr. Charles Pearce.
5. More than two (2) years have passed since Claimant filed a Form AR-C with the Commission. Since this time, Claimant has failed to make a *bona fide* request for a hearing or otherwise pursue his claim for workers' compensation benefits.
6. On February 25, 2021, Respondents filed a Motion to Dismiss for failure to prosecute.
7. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
8. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.

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

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE