

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H103342

LINDA STRAW, EMPLOYEE

CLAIMANT

SC REALTY SERVICES, INC., EMPLOYER

RESPONDENT

**TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 14, 2022

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

Claimant, Ms. Linda Straw, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Guy A. Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 5, 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 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 May 5, 2022, 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 by reference. Respondents' exhibit packet consisted of fourteen (14) pages of opinions and communication, including the following: the Opinion filed January 13, 2022; Claimant's former counsel's motion to withdraw; notice to the Claimant of her counsel's motion to withdraw; an Opinion from the Full Commission granting counsel's motion to withdraw; Respondents' letter motion to dismiss; notice to Claimant of Respondents' letter motion to dismiss;

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and Notice of the dismissal hearing. The exhibit was labeled as Respondents' Exhibit #1 and was admitted into evidence.

BACKGROUND

The record reflects that on April 9, 2021, through Claimant's counsel of record at the time, a Form AR-C was filed indicating that Claimant sustained an injury to her right knee, right arm, back, and other whole body. Per this form, Claimant asserted an accident date of February 1, 2021, and asserted her entitlement to the full range of initial and additional benefits. On the Form AR-C, Claimant described the cause of her injury as follows: "Floor was being mopped and there was no wet floor sign. Claimant slipped and fell. Claimant sustained injuries to her right arm, right knee, back, and other whole body."

Respondents filed a Form AR-2 on April 13, 2021, indicating that the Respondents controverted the claim. Thereafter, no further action was taken until November 15, 2021, when Respondents filed a letter motion to dismiss for lack of prosecution. On November 16, 2021, the Commission notified the Claimant, advising her of Respondents' motion and a deadline for filing a written response. There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated December 15, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' letter motion to dismiss for failure to prosecute. Said hearing was scheduled for January 13, 2022, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room B, 324 South Spring Street, Little Rock, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. By way of e-mail communication from Claimant's attorney, Claimant had no objection to the motion to dismiss without prejudice and waived her appearance at the hearing.

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Therefore, a hearing was in fact conducted as scheduled on Respondents' letter motion to dismiss for failure to prosecute. Respondents appeared through their attorney and argued for dismissal pursuant to our Commission Rule 099.13.

After a hearing on Respondents' letter motion to dismiss, the Administrative Law Judge filed an Opinion on January 13, 2022, granting Respondents' motion to dismiss without prejudice pursuant to the Commission's Rule 099.13.

Thereafter, on February 16, 2022, Claimant's counsel filed a motion to withdraw, which was granted by the Full Commission on March 1, 2022.

Respondents then filed a second letter motion to dismiss for lack of prosecution on March 8, 2022. On March 9, 2022, the Commission notified the Claimant, advising her of Respondents' motion and a deadline for filing a written response. There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated April 5, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' letter motion to dismiss for failure to prosecute. Said hearing was scheduled for May 5, 2022, at 9:30 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room B, 324 South Spring Street, Little Rock, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. According to the Commission's file, the regular mail was returned to sender. The certified letter appears to have been forwarded to a California address and delivered on April 14, 2022, at 9:49 a.m. A signature was obtained. However, there was no response from Claimant in this regard.

At the second dismissal hearing, Respondents' counsel advised that subsequent to the previous hearing on Respondents' motion to dismiss and the Opinion granting the dismissal

without prejudice, Claimant’s attorney of record at the time filed a motion to withdraw from representation. No further action had been taken on the claim. Counsel stated that a second motion to dismiss was filed out of an “abundance of caution to make sure that [did not] trigger anything from the Commission or from the Claimant in any way that would reignite or restart this particular matter.” Counsel stated further that, “So basically, this is just to make sure that this matter is over and concluded, and that it is dismissed.”

DISCUSSION

The applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. § 11-9-702(d) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) 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)

In the present matter, a previous Opinion was entered by the Administrative Law Judge on January 13, 2022, granting Respondents’ motion to dismiss and dismissing the claim without

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prejudice under Commission Rule 099.13. Since that time, the Claimant has not filed another claim for workers' compensation benefits. I am, therefore, compelled to find that there is no claim subject to dismissal pursuant to Respondents' motion. As a result, the Respondents' letter motion to dismiss is hereby respectfully denied.

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. On January 13, 2022, the Administrative Law Judge entered an Opinion granting Respondents' motion to dismiss and dismissing the claim without prejudice under Commission Rule 099.13.
3. Thereafter, the Claimant did not file another claim for workers' compensation benefits in this matter.
4. Respondents' letter motion to dismiss is denied because no claim exists to be subject to dismissal.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to deny the Respondents' motion for dismissal because no claim was ever filed by the Claimant to be subject to dismissal.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE