

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G105468

BILLY A. TAYLOR,
EMPLOYEE

CLAIMANT

FIBER SOULUTIONS, INCORPORATED,
EMPLOYER

RESPONDENT

STONETRUST COMMERCIAL INSURANCE COMPANY,
CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 31, 2021

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

Claimant, pro se, failed to appear.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 25, 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 tried on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the August 25, 2021, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Commission's Exhibit 1 consists of the Prehearing Order of July 20, 2021.

DISCUSSION

On July 6, 2011, the Claimant filed with the Commission, a claim for Arkansas workers' compensation benefits via a Form AR-C. He alleged an injury date of June 4, 2011. It appears that the Claimant alleged injuries to multiple parts of the left side of his body, allegedly when he slipped and fell on paper. It appears that the Claimant alleged injuries to his left ankle, leg, hip, and low back. He requested both initial and additional benefits. The Claimant also stated that he was due "lost wages" as a result of being terminated from his employment by the respondent-employer. The Claimant filed another Form AR-C with the Commission on March 28, 2014. The Claimant again alleged that he sustained multiple bodily injuries on June 4, 2011, while working for the respondent-employer. The Claimant checked off all the boxes for initial benefits in the form of temporary total disability, rehabilitation, and medical expenses. He also requested a 40% anatomical impairment rating. On the Form AR-C, the Claimant was asked to list a person or entity that paid benefits under a group health, disability, or loss of income policy for the injury reported, he wrote, "NO, ONE, SABOTAGE, DENIED June 4, 2011 to March 22, 2014."

The respondent-insurance-carrier filed a Form AR-2 with the Commission on July 18, 2011, wherein they controverted compensability of the claim.

A hearing was held on September 29, 2011 before Former Administrative Law Judge (ALJ) Barbara Webb. At that time, the issues of average weekly wage, compensability, and associated benefits were litigated. In an Opinion dated December 28, 2011, Former ALJ Webb found, among other things, that the Claimant sustained an injury to his left ankle. However, she found that the Claimant failed to prove by a preponderance of the evidence any other injuries by objective medical findings, and no medical benefits or indemnity benefits were awarded. The Claimant

appealed to Full Commission. Per an Opinion and Order filed by the Full Commission on March 12, 2012, they affirmed and adopted the decision of December 28, 2011.

The record shows that the Claimant appealed said decision to the Court of Appeals. However, the Claimant's appeal was dismissed because he failed to timely perfect his appeal by paying the filing fee and/or he did not file a brief.

On or about May 7, 2012, the Claimant requested a hearing before the Commission. A second hearing was held on October 26, 2012, before Former ALJ Webb. Pursuant to an Opinion filed on January 22, 2013, Former ALJ Webb made the following findings of fact and conclusion of law, in relevant part: "... The issue of Claimant's entitlement to temporary total disability benefits and right to reasonable and necessary medical treatment was fully adjudicated as of the date of the prior hearing and is thus *res judicata*.

The Claimant appealed to that decision to the Full Commission. On May 10, 2013, the Full Commission affirmed and adopted the decision of January 22, 2013.

My review of the Commission's file shows that the parties did not appeal the Full Commission's decision of May 10, 2013. However, since this time the Claimant has made repeated requests for a hearing on issues that have been previously decided by the Commission.

In that regard, it appears that the Claimant erroneously believes he is entitled to additional benefits, in part based on the dissenting Commissioner's (Philip A. Hood) concurring and dissenting opinion outlined in the May 10, 2013 Full Commission's decision. Specifically, Commissioner Hood wrote, "I agree that the issues of temporary total disability benefits and the Claimant's right to reasonable and necessary medical treatment were fully adjudicated as of the date of the prior hearing and are *res judicata*." He also agreed that the Respondents were not entitled to costs because the Claimant raised new issues." However, Commissioner Hood opined

that he would have awarded the Claimant reasonable and necessary medical treatment to address the Claimant's ankle swelling, pain, and de-conditioning and award temporary total disability benefits from August 30, 2012 to a date yet to be determined.

Of late, in May of 2021, the Claimant requested another hearing before the Commission.

On July 20, 2021, a prehearing telephone conference was held in this claim with the parties. At that time, the parties agreed to litigate the following issues: 1. Motion to Dismiss. 2. Statute of limitations. 3. *Res judicata*. 4. Penalties assessed against the Claimant for filing frivolous pleadings. 5. Lien against any other benefits being received by the Claimant. 6. Compensation for wage loss, compensatory damages, failure to provide coverage, and anatomical impairment rating (left leg injury).

Pursuant to the prehearing order, the hearing was scheduled for August 25, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas. Said order was sent to the parties via Certified Mail. Information received by the Commission from the United States Postal Service shows that this item was delivered to the Claimant's home address on July 24, 2021.

However, the Claimant failed to appear at the hearing. The Respondents appeared through their attorney. Since the Claimant failed to appear, the Respondents moved that the claim be dismissed for a lack of prosecution.

Counsel essentially noted that the Claimant has had two hearings held on this claim already and that all of the issues are now *res judicata* and barred by the statute of limitations. He further noted that the Claimant has made repeated attempts to reopen his claim but failed to appear at the hearing. As such, Counsel basically moved that this claim be dismissed under Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

As shown by the evidence recounted above, (1) reasonable notice of the full hearing was attempted on the parties; and (2) Claimant has failed to pursue his claim because he has taken no bona fide action in pursuit of it (including appearing at the August 25, 2021 hearing to argue against its dismissal) since 2013. Thus, the evidence preponderates that dismissal is warranted under Rule 099.13. Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9- 702. Moreover, all other issues have been rendered moot not discussed herein this Opinion.

I find that the dismissal of this claim should be and hereby is entered 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:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed a claim per Form AR-Cs alleging an injury on June 4, 2011. Since this time, two hearings have been held on the merits of the claim. In May 2021, the Claimant requested a hearing.
3. The Claimant failed to appear at the hearing.
4. The Respondents moved that the claim be dismissed.
5. The evidence preponderates that the Claimant has failed to prosecute his claim under Arkansas Workers' Compensation Commission Rule 099.13.
6. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.
7. The motion to dismiss is granted; the claim is hereby dismissed without prejudice pursuant to Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Pursuant to the findings of fact and conclusions of law set forth above, this claim is hereby respectfully dismissed under Arkansas Workers' Compensation Commission Rule Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge