

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO.: H202358

CHRISTOPHER TUCK, EMPLOYEE	CLAIMANT
VSC FIRE & SECURITY, INCORPORATED, EMPLOYER	RESPONDENT
NEW HAMPSHIRE INSURNACE COMPANY, INSURANCE CARRIER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED NOVEMBER 10, 2022

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

The Claimant represented by Michael L. Ellig, Attorney at Law, Fort Smith, Arkansas. Mr. Ellig waived his appearance at the hearing.

The Respondents represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, in the above-styled claim on October 19, 2022 pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this matter should be dismissed due to the Claimant's failure to diligently prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was provided to all parties in the manner prescribed by law.

The record consists of the hearing transcript from October 19, 2022. Additionally, the Commission's file was made a part of the record. It is incorporated into the hearing transcript by reference. Respondents offered into evidence a Documentary Exhibit consisting of fourteen (14) numbered pages. It was marked as Respondents' Exhibit 1.

No testimony was taken during the hearing.

Procedural History

The Claimant's attorney filed a Form AR-C with the Commission in the above-styled claim on March 22, 2022. Per this document, the Claimant alleged he sustained an injury while working for the respondent-employer on March 17, 2022. Specifically, in the Form AR-C, the cause of the Claimant's injury and the part of his body that was injured, was described as: "right foot - forklift ran over right foot." Counsel requested on behalf of the Claimant, both initial and additional workers' compensation benefits. Notably, Claimant's counsel checked all the boxes for both types of benefits.

On or about April 6, 2022, Respondents (the insurance carrier) filed a Form AR-2 with the Commission accepting the claim as compensable, for a medical only claim. Per this Form, the insurance carrier paid appropriate medical benefits to and on behalf of the Claimant.

Subsequently, the Commission entered an order approving the Claimant's request for a change of physician on April 19, 2022 for the Claimant to treat with Dr. Jason Pleimann. As a result, the Claimant began treating with Dr. Pleimann. Ultimately, on July 25, 2022 the Claimant was declared to be MMI without any work restrictions and no impairment, by his treating physician, Dr. Pleimann.

In the meantime, the Claimant resumed working for the respondent-employer and has not asked for any additional benefits by way of a request for a hearing.

Since the filing of the second Form AR-C, there has been no activity on the part of the Claimant to pursue his claim for workers' compensation benefits. Most importantly, the Claimant has not requested a hearing since the filing of the Form AR-C, in March 2022.

Therefore, on September 30, 2022, Respondents filed with the Commission a Motion to Dismiss and Incorporated Brief in Support, with a certificate of service to the Claimant's attorney. This document shows that Respondents served a copy of the above foregoing pleading to the Claimant's attorney by depositing a copy thereof, with prepaid postage, in the United States Mail, to his proper address.

Subsequently, on October 10, 2022, the Claimant's attorney filed with the Commission, a Claimant's Response to Motion to Dismiss. To summarize, counsel stated that the Claimant had no objection to a dismissal "without prejudice" to the refiling, should there be a dispute over future benefits.

On October 10, 2022, the Commission sent a Notice of Hearing to the parties by way of certified mail, to inform them that a hearing on Respondents' motion to dismiss was scheduled for October 19, 2022, at 12:30 p.m., at the Commission, in Little Rock.

The dismissal hearing was in fact conducted on Respondents' motion for dismissal. The Claimant and his attorney were excused from attending the hearing. Counsel for Respondents appeared and moved that this claim be dismissed without prejudice. Specifically, counsel for the Respondents noted that all appropriate benefits have been paid as stated in the Claimant's motion; and that the Claimant does not object

to his claim being dismissed without prejudice. Counsel further noted that no action has been taken by the Claimant to prosecute his claim since the filing of the Form AR-C. As a result, counsel requested that this claim be dismissed without prejudice under the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

Discussion

Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

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, in relevant part:

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)

My review of the record shows that more than six months have passed since the filing of the Form AR-C for the Claimant's admittedly compensable injury of March 17, 2022. However, since this time, the Claimant has failed to make a request for a hearing before this Commission for any additional benefits. The record before me proves that all appropriate benefits have been paid. Most notably, the Claimant agrees with his workers' compensation claim being dismissed, without prejudice.

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 this claim should be granted pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule

099.13. This dismissal is without prejudice, to the refiling of this claim 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. The Claimant filed a Form AR-C with the Commission on March 23, 2022 for his work-related injury of March 17, 2022. Since this time, no request for a hearing has been made.
3. The Respondents filed a Motion to Dismiss and Incorporated Brief in Support, with the Commission on September 30, 2022.
4. The Claimant agrees with this matter being dismissed, without prejudice.
5. The evidence preponderates that Respondents' motion to dismiss for want of prosecution is warranted.
6. That Respondents' motion to dismiss this claim is hereby granted pursuant Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, without prejudice, to the refiling within the specified limitation period.

ORDER

Based on the foregoing findings of fact and conclusions of law, the claim filed in this matter is dismissed without prejudice, to the refiling of it within the specified time.

IT IS SO ORDERED.

Hon. Chandra L. Black
Administrative Law Judge