

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906773

VESTA TUSSEY,
EMPLOYEE CLAIMANT

FIRST STEP, INC.,
EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR RESPONDENT

OPINION FILED JANUARY 21, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Pulaski County, Little Rock, Arkansas.

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

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

STATEMENT OF THE CASE

A hearing was held on January 20, 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 attempted on all parties to their last known address, in the manner prescribed by law.

Tussey- G906773

The record consists of the transcript of the January 20, 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.

DISCUSSION

In the claim at bar, the Claimant sustained admittedly compensable injuries on October 4, 2019, while working for the respondent-employer\First Step.

Her former attorney filed a Form AR-C, with the Commission on February 19, 2020, wherein she essentially alleged that the Claimant sustained multiple bodily injuries on October 4, 2019, in the course of her employment with First Step. The Claimant's attorney requested both initial and additional workers' compensation benefits. Per this Form AR-C, the following description of the Claimant's accidental injury was given: "Claimant tripped over a seam in the carpet and fell, injuring her face, back, shoulder, arm, wrist, and other whole body."

On October 17, 2019, the Respondents filed an initial Form AR-2, with the Commission. Per this initial Form AR-2, the Respondents notified the Commission that they had accepted this claim and were paying appropriate benefits.

Tussey- G906773

The respondent-insurance-carrier filed an amended Form AR-2, with the Commission on March 2, 2020, wherein they accepted compensability for the Claimant's face, left shoulder, left elbow, neck, and left knee injuries. However, the Respondents basically stated that they could not accept or deny any other injury until the Claimant identified the injured bodily part. However, my review of the Commission's file demonstrates that the Respondents paid some indemnity and medical to and on behalf of the Claimant.

Subsequent to the filing of the Form AR-C, the Claimant took no action whatsoever to prosecute her claim.

Therefore, on March 26, 2020, the Claimant's former attorney filed with the Commission a Motion to Withdraw from representing the Claimant in this matter.

The Full Commission entered an Order relieving the Claimant's attorney as counsel of record in this matter. Said Order was entered on May 20, 2020.

Still, there was no action taken by the Claimant to prosecute the within claim for workers' compensation benefits.

As a result, on December 3, 2020 the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute. A Certificate of Service was also filed by the Respondents' attorney,

Tussey- G906773

wherein they certified that a copy of the foregoing motion was mailed to the Claimant.

However, there was no response from the Claimant.

On December 9, 2020, the Commission sent a Notice to the Claimant notifying her of the Respondents' motion, and a deadline of twenty days (20) for filing a written response.

Still, there was no response from the Claimant about this correspondence.

As a result, pursuant to a Hearing Notice dated December 30, 2020, the Commission advised the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for January 20, 2021, at 2:30 p.m., at the Arkansas Workers' Compensation Commission, in Little Rock.

Again, there was no response from the Claimant in this regard.

Therefore, a hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear at the hearing. However, the Respondents appeared through their attorney.

Counsel noted that the Claimant has failed to prosecute her claim for workers' compensation benefits. Specifically, counsel essentially stated for her motion that since the filing of the

Tussey- G906773

Form AR-C, the Claimant has not made a bona fide request for a hearing, or in any manner attempted to resolve her claim. As such, counsel requested that this claim be dismissed, without prejudice, pursuant to Ark. Code Ann. §11-9-702, and our Rule 099.13.

A review of the evidence shows that the Claimant has had ample time to pursue her claim for workers' compensation benefits, but she has failed to do so. Specifically, the Claimant has not requested a bona fide hearing or otherwise attempted to prosecute her claim since the filing of Form AR-C, which was almost over a year ago. Furthermore, the Claimant has not objected to the dismissal of claim.

After consideration of the evidence presented, I find that the Respondents' Motion to Dismiss for Failure to Prosecute to be well taken. Therefore, I further find that pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, the within claim for workers' compensation benefits should be dismissed without prejudice to the refiling within the specified 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 or about October 4, 2019, the Claimant sustained bodily injuries due to a fall at work. On February 19, 2020, the Claimant filed a Form AR-C, with the Commission requesting both initial and additional workers' compensation benefits.
3. Subsequently, the Respondents filed an amended Form AR-2, wherein they accepted the claim as compensable for injuries to the Claimant's face, left shoulder, left elbow, neck, and left knee.
4. The Claimant has not requested a hearing since the filing of the Form AR-C, in February 2020.
5. On December 3, 2020, the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute.
6. The Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no bona fide action has been taken by the Claimant in furtherance of her claim, as she has failed to timely prosecute this matter. Moreover, the Claimant has not objected to her claim being dismissed.
7. Appropriate Notice of this hearing was attempted on all parties to their last known address, in the manner prescribed by law.
8. The Claimant failed to appear at the hearing to object to the Respondents' Motion to Dismiss for Failure to Prosecute.
9. That the Respondents' Motion to Dismiss for Failure to Prosecute is hereby granted pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of the claim within the specified time period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. As such, the Respondent's Motion to Dismiss for Failure to Prosecute is hereby granted.

This dismissal is 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.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

clb/bh

