

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H101250

CHRISTY VAUGHN, EMPLOYEE	CLAIMANT
ESTES EXPRESS LINES, INC., EMPLOYER	RESPONDENT
NATIONAL UNION FIRE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
GALLAGHER BASSETT SERVICES, THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED MAY 13, 2022

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

Claimant, pro se, did not appear at the hearing.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on April 13, 2022 in this claim for workers' compensation benefits 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 is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (d) (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner set by law.

The record consists of the April 13, 2022 hearing transcript. Also, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

The Respondents introduced into evidence a Respondents' Documentary Exhibit, which consisted of thirty-two (32) numbered pages. It was marked Respondents' Exhibit 1.

No testimony was taken at the hearing.

Background

The Claimant's attorney filed a Form AR-C with the Commission on February 27, 2020. The following description of the Claimant's alleged injury was provided: "Claimant stepped out of truck and injured her ankle. Claimant sustained injuries to her right leg, right ankle, right foot, right toes and other whole body." The Claimant alleged an accident date of January 23, 2020. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. At the time of the filing of the Form AR-C, the Claimant's attorney wrote a letter to the Commission requesting that the file be placed in the Commission's open files because the claim was not ripe for a hearing at that time.

On or about March 5, 2020 the Respondents filed a Form AR-2 with the Commission controverting this claim. However, the senior claims representative wrote, in relevant part: "This claim has been accepted under AL jurisdiction and the clmt [Claimant] is receiving benefits accordingly. The claim is being denied under AR jurisdiction due to a lack of jurisdiction."

The Claimant's attorney filed a motion to withdraw from representing the Claimant in this matter on July 13, 2021. The Full Commission granted the motion to withdraw pursuant to an Order entered on July 30, 2021.

Since the filing of the Form AR-C over two years ago, the Claimant has not requested a hearing on her claim for workers' compensation benefits.

However, the record demonstrates the Respondents paid substantial medical and indemnity benefits in this matter. Since this time, no request for a hearing has been made by the Claimant.

Therefore, on February 23, 2022 the Respondents filed a Respondents' Motion to Dismiss With or Without Prejudice and a Respondents' Brief in Support of Motion to Dismiss With or Without Prejudice. These pleadings were accompanied by a certificate of service to the Claimant by way of depositing a copy of them in the mail to her.

On February 28, 2022 the Commission sent a notice to the Claimant of the Respondents' motion to dismiss, with a deadline of March 21, 2022 for filing a written objection to the motion.

Tracking information received by the Commission from the United States Postal Service shows that on March 2, 2022, the notice was delivered to the Claimant's home and left with an individual. Yet there was no response from the Claimant.

Therefore, on March 23, 2022 the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for April 13, 2022 on the Respondents' motion to dismiss.

Tracking information received by the Commission from the United States Postal Service shows that on April 5, 2022, the above notice was delivered to the Claimant's home and left with an individual. Still, there was no response from the Claimant.

A hearing was conducted on the Respondents' motion to dismiss as scheduled. The Claimant did not attend the hearing. During the hearing, the Respondents' attorney, among other things, renewed his request for the claim to be dismissed without prejudice due to a lack of prosecution pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13.

Discussion

In that regard, the applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (d) (Repl. 2012) 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 states, in relevant part:

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)

My review of the evidence shows that the Claimant has not requested a hearing since the filing of her claim for workers' compensation benefits via the Form AR-C, which was filed in February 2020. The Claimant has failed to respond to the written notices of this Commission and did not appear at the hearing to object to her claim being dismissed. This leads me to conclude that the Claimant has abandoned her claim for workers' compensation benefits.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim should be granted under the provisions of Ark. Code Ann. §11-9-702(d) and Rule 099.13 of this Commission. Said 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 parties were provided reasonable notice of the motion to dismiss and hearing thereon.
3. The evidence preponderates that the Respondents' motion to dismiss for want of prosecution is warranted.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (d) (Repl. 2012) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge