

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H010337

CYNTHIA VINSON,
EMPLOYEE

CLAIMANT

NORTH LITTLE ROCK SCHOOL DISTRICT'S
TRANSPORTATION DEPARTMENT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED SEPTEMBER 15, 2023

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

Claimant, pro se, did not attend the dismissal hearing.

Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on September 13, 2023 in the above-referenced case pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether this claim should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was provided to all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the September 13, 2023, hearing and the documents held therein. Specifically, the Respondents offered one exhibit into evidence, consisting of nineteen (19) numbered pages. It was marked Respondents' Exhibit 1. Also, the Commission's

file has been made a part of the record. It is hereby incorporated into the September 13, hearing transcript by reference.

Procedural History

On January 6, 2021, the Claimant wrote a letter to the Commission requesting a hearing in the above-captioned claim for workers' compensation benefits. At that time, the Claimant was unrepresented. Therefore, Clerk of the Commission transferred the claim to the Legal Advisors' Division for a mediation conference. However, the Claimant failed to participate in the mediation process. Therefore, the legal advisor returned the claim to the Clerk of the Commission for the claim to be assigned to an Administrative Law Judge, which was done.

Subsequently, the Claimant retained an attorney to represent her in this matter. Hence, the hearing process was started. On April 28, 2021, a prehearing telephone conference was conducted in this case. At that time, the claim was scheduled for a hearing on the merits for June 30, 2021. However, on June 9, 2021, the Claimant's attorney wrote to the Commission to request that the June 20 hearing be rescheduled due a to personal conflict. As a result, another full hearing was scheduled for July 20, 2021. The Claimant's attorney sent an email to the Commission the day prior to the hearing stating that there was a discovery issue regarding his client's average weekly wage. Therefore, the Claimant's attorney asked that the July 19 hearing be canceled. Per agreement of the parties, I canceled the full hearing and returned the case to the Commission's general files.

Yet, for almost two years, there was no action whatsoever taken on the part of the Claimant to pursue her claim for workers' compensation benefits. However, on June 28, 2023, the Claimant's attorney filed a motion to withdraw from representing her in this claim. The Full

Commission entered an Order on July 11, 2023, granting the motion for the Claimant's attorney to withdraw as her counsel of record in this matter.

Still, there was no action taken by the Claimant to resolve her claim, and nor did she request a hearing.

Therefore, the Respondents filed a letter-motion with the Commission on July 14, 2023, requesting that the claim be dismissed due to a lack of prosecution. The Respondents provided the Claimant with a copy of the motion via mail through the United States Postal Service.

The Commission sent a letter to the Claimant on July 20, 2023, giving her a deadline of twenty (20) days to file a written response to the motion with the Commission. Said letter was mailed to the Claimant's last known address via first-class and certified mail.

Per information obtained from the Postal Service, the Claimant picked this correspondence up from the Post Office on July 24, 2023. The return receipt request for proof of delivery bears the Claimant's signature.

Yet, there has been no response from the Claimant.

Therefore, per a Hearing Notice mailed on August 10, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. The notice was sent to the Claimant via first-class and certified mail. Said hearing was scheduled for September 13, 2023, at the Commission in Little Rock, Arkansas.

The notice that the Commission sent to the Claimant via first-class mail has not been returned to Commission. Per delivery information received from the Postal Service by the Commission on August 14, 2023, the Claimant picked up the notice of hearing from the local Post Office, in North Little Rock that same day. Thus, my review of the proof of delivery demonstrates that the Claimant signed for the hearing notice. Hence, it bears her signature.

Nevertheless, there has been no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. Yet, the Claimant did not attend the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel stated that the Claimant has had reasonable time to move forward with this claim, but she has failed to do so. Therefore, counsel moved that this claim be dismissed due to a lack of prosecution.

Discussion

The record before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since July 2021, which is more than two (2) years ago. More importantly, the Claimant did not appear at the hearing to object to her claim being dismissed and she has not responded to the notices of this Commission.

Under these circumstances, I am persuaded that the Claimant has abandoned her claim for workers' compensation benefits. Accordingly, I find that the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits in the proper manner set forth under the law. Consequently, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, *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 per Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The Respondents filed with the Commission, a motion for dismissal of this claim due to a lack of prosecution, for which a hearing was held.
3. The Claimant did not appear at the hearing. Moreover, she has not objected to her claim being dismissed.
4. The Claimant has not requested a hearing since July 2021. Hence, the evidence preponderates that the Claimant has failed to timely prosecute her claim for workers' compensation benefits.
5. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law. However, the Claimant did not attend the hearing, and she has not objected to the motion to dismiss her claim.
6. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby respectfully granted, *without prejudice*, per Ark. Code Ann. §11-9-702 and Commission Rule 099.13, to the refiling of it, within the limitation period specified by law.

ORDER

Following the findings of fact and conclusions of law set forth above, this claim is hereby respectfully dismissed per Ark. Code Ann. §11-9-702 and Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge