

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H306652

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| DEBORAH VOYLES, EMPLOYEE | CLAIMANT |
| BELVEDERE NURSING REHAB CENTER, LLC, A SUBSIDIARY OF CENTRAL ARKANSAS NURSING CENTERS, INC., EMPLOYER | RESPONDENT |
| INDEMNITY INSURANCE COMPANY OF NORTH AMERICA (PA), INSURANCE CARRIER | RESPONDENT |
| ESIS, INC., THIRD PARTY ADMINISTRATOR | RESPONDENT |

OPINION FILED JULY 30, 2024

A hearing was held before Administrative Law Judge Chandra L. Black, in Garland County, Hot Springs, Arkansas.

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

Respondents represented by the Honorable Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 26, 2024, 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(a)(4), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the July 26, 2024, hearing and the documents held therein. Specifically, Commission's Exhibit 1 includes four (4) total pages of correspondence and

returned receipt from the United States Postal Service; and Respondents' Exhibit 1 consisting of twenty-one (21) numbered pages of pleadings, correspondence, unexecuted authorizations, discovery requests, and various other forms related to this claim.

No testimony was taken at the dismissal hearing.

Discussion

On October 11, 2023, the Claimant's former attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant via a Form AR-C. Per this document, the Claimant alleged that she was injured during the course and scope of her employment with the respondent-employer, February 3, 2023. Specifically, the Claimant alleged injuries to her right shoulder, right arm, and other whole body. Her attorney checked all the boxes for both initial and additional benefits.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on November 2, 2023, wherein they denied compensability of the claim. Per this document, the claims representative stated that the claim was being controverted on the following grounds: "Claim does not meet criteria for compensability."

Since the filing of the Form AR-C on October 11, 2023, there has been no action on the part of the Claimant to prosecute this case by way of a bona fide request for a hearing, or otherwise pursue her claim.

On February 8, 2024, the Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant in this matter because she had tried to reach her several times by telephone, but her attempts had been unsuccessful. There being no objection to the motion for the Claimant's attorney to withdraw as counsel of record for the Claimant in this matter, the Full Commission entered an Order on March 20, 2024, granting the motion.

Still, there was no request for a hearing made by the Claimant.

Therefore, on or about April 24, 2024, the Respondents filed a Respondents' Motion to Dismiss, which was accompanied by a Brief in Support of Motion to Dismiss, with the Commission, along with a Certificate of Service. Per this documentation, the Respondents' attorney stated that he had served a copy of the foregoing pleading on the Claimant¹ by depositing a copy thereof in the United States Mail.

The Commission sent a letter to the Claimant on April 25, 2024, informing Claimant of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter was mailed to the Claimant by both first-class and certified mail. Tracking information received by the Commission from the Postal Service shows that they delivered this parcel of mail to the Claimant on April 27, 2024. The letter sent by first-class mail has not been returned to the Commission.

As of late, there has not been any type of reply from the Claimant.

Pursuant to a Hearing Notice dated May 16, 2024, the Commission notified the parties that the matter had been set for a hearing on the Respondents' motion to dismiss. Said hearing was scheduled for Friday, July 26, 2024, in Hot Springs, Arkansas.

Said letter was mailed to the Claimant by both first-class and certified mail. Information received from the Postal Service shows that they delivered the notice of hearing to the Claimant on May 18, 2024. The letter sent by first-class mail has not been returned to the Commission.

Based on all of the foregoing tracking information received by the Commission from the Postal Service, I find that the Claimant received proper notice of the dismissal hearing.

¹ Although the Certificate of Service incorrectly indicates that the pleading was mailed to the Claimant's attorney, the Claimant is the named recipient for delivery of said pleading.

Nevertheless, the hearing was held as scheduled. Counsel for the Respondents appeared at the hearing. However, the Claimant did not attend the hearing. The Respondents' counsel argued that the Claimant has failed to prosecute her claim for workers' compensation benefits. Counsel further noted that the Claimant has not taken any affirmative action to prosecute her claim well over six (6) months. More specifically, counsel noted that the Claimant has not taken any action to advance her claim since the filing of the Form AR-C, which was done more than a year ago. Counsel for the Respondents also stated that the Claimant has not responded to the notices of this Commission. Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13, without prejudice.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this initial claim for benefits/compensation are outlined below:

Ark. Code Ann. §11-9-702(a)(4) provides:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Commission Rule 099.13 reads:

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)

A review of the evidence shows that the Claimant has had ample time to pursue her claim for initial workers' compensation benefits, but she has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute her claim for workers' compensation benefits since the filing of the Form AR-C, over more than a year ago; and nor has she resisted the motion for dismissal or even responded to the notices of this Commission. Hence, the evidence preponderates that the Claimant has failed to prosecute this claim for initial workers' compensation benefits. Moreover, considering that the Claimant did not respond to the notices of this Commission and did not appear at the dismissal hearing, I am convinced that the Claimant has abandoned her claim for workers' compensation benefits.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to Ark. Code Ann. §11-9-702 (a)(4) and Commission Rule 099.13, this claim for initial workers' compensation benefits should be dismissed *without prejudice* to the refile within the limitation period specified under the Arkansas Workers' Compensation Act.

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 Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.

2. The Claimant has not requested a hearing since her former attorney filed the Form AR-C, which was done more than a year ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for initial workers' compensation benefits based upon the relevant provisions of the specified statute, Ark. Code Ann. §11-9-702 (a)(4), and Rule 099.13 of this Commission.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702 (a)(4), and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for initial workers' compensation benefits. This dismissal is pursuant to Ark. Code Ann. §11-9-702(a)(4), and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge