

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H404490

ANGEL MARIE WALLACE,
EMPLOYEE

CLAIMANT

WENDY'S LLC,
EMPLOYER

RESPONDENT

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,
(TPA)

RESPONDENT

OPINION FILED FEBRUARY 18, 2025

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

The Claimant represented by the Honorable Mark Alan Peoples, Attorney at Law, Little Rock Arkansas. Mr. Peoples waived his appearance at the hearing.

Respondents represented by the Honorable Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 4, 2025, 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/or 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.

No testimony was taken.

The record consists of the transcript of February 4, 2025, hearing and the documents held therein. The Commission's Exhibit consists of eight (8) pages, including correspondence from the

Claimant's attorney, which was marked accordingly, and Respondents' Exhibit 1 consisting of four (4) numbered pages of pleadings, correspondence, and other documents related to this claim.

Procedural History

On July 15, 2024, the Claimant's attorney filed with the Commission a claim for Arkansas workers' compensation benefits via a Form AR-C. Per this document, the Claimant alleged that he sustained injuries during the course and in the scope of his employment with the respondent-employer, on June 22, 2024. Per this document, the Claimant alleged that she injured her neck, both shoulders, and both wrists in a work-related accident. The Claimant requested only initial benefits. In fact, her attorney checked off all the boxes for every conceivable initial workers' compensation benefit allowed under the law.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on August 27, 2024. Per this form, the carrier accepted the Claimant's injuries in the form of "bilateral shoulder sprains and bilateral wrist sprains."

Since this time, the Claimant has not tried to pursue or otherwise resolve her claim. Moreover, nor has the Claimant made a bona fide request for a hearing since the filing of the Form AR-C.

Therefore, on January 28, 2025, the Respondents filed a *Motion to Dismiss for Failure to Prosecute*, with the Commission, along with a certificate of service to the Claimant's attorney. Specifically, the Respondents mailed a copy of said motion to the Claimant's attorney via the United States Postal Service.

My office sent a letter to the Claimant and her attorney on January 30, 2025, informing them of the Respondents' motion, and a deadline of twenty (20) days to file a written response. Said letter was mailed to the Claimant's attorney and her by both first-class and certified mail.

The Claimant's attorney sent the following e-mail to my office on January 30, 2025, "We will not oppose the motion, provided dismissal is w/o prejudice. We will ask to be excused from any hearing on the motion." As a result, the Claimant's attorney was excused from attending the dismissal hearing.

Pursuant to a Hearing Notice dated January 31, 2025, my office notified the parties that the matter had been set for a hearing on the Respondents' motion to dismiss. Said hearing was scheduled for February 4, 2025, at the Arkansas Workers' Compensation Commission in Little Rock, Arkansas.

The hearing was held as scheduled. The Claimant and her attorney did not appear for the hearing. Hence, as previously noted above, the Claimant's counsel was excused from attending the hearing. Nevertheless, the Respondents' counsel appeared at the hearing and argued that the Claimant has failed to prosecute her claim for workers' compensation benefits. More specifically, the Respondents' 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 six (6) months ago. Counsel further noted that the Claimant's attorney has indicated that he does not object to the claim being dismissed *without prejudice*. Therefore, the Respondents' attorney asked that this claim be dismissed *without prejudice* pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13.

Adjudication

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

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

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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, 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 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 Form AR-C, over more than six (6) months ago; and nor has she resisted the motion for dismissal of her claim. In fact, the Claimant's attorney has consented to her claim being dismissed *without prejudice*.

Hence, to summarize, I hereby find that the evidence preponderates that the Claimant has failed to promptly prosecute this claim for workers' compensation benefits. Therefore, after consideration of the evidence before me, I am compelled to find that the Respondents' motion to dismiss for a lack of prosecution to be well taken.

Accordingly, I thus find that pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act (the "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.
3. The Claimant's attorney has consented to her claim being dismissed without prejudice. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim pursuant to the relevant provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13.
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 lack of prosecution is hereby 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

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is per Ark. Code Ann. §11-9-702, 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