

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G804139

WALTER WATLINGTON,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER COMPANY,
SELF-INSURED EMPLOYER

RESPONDENT NO. 1

CENTRAL ADJUSTMENT COMPANY,
THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY TRUST
FUND

RESPONDENT NO. 2

OPINION FILED MAY 19, 2022

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

Claimant represented by Mr. Paul Miller, Attorney at Law, Texarkana, Texas. Mr. Miller waived his appearance at the hearing. The Claimant also waived his appearance at the hearing.

Respondents No. 1 represented by Ms. Karen. H. McKinney, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake also waived his appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held on Respondents No. 1's¹ motion to dismiss for want of prosecution, on May 18, 2022, in the above referenced 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 was whether this claim should be dismissed due to

¹Of significance, while Respondent No. 2 was not named as a party in this claim during the hearing; the Trust Fund has been joined as a party to the claim as noted above. However, the Fund waived its appearance at the hearing and has not objected to the motion to dismiss.

the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (d) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was had on all the parties in this matter.

The record consists of the transcript of the May 18, 2022 hearing. The entire Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents No.1 introduced into evidence one exhibit consisting of eight pages. Said exhibit has been marked as Respondent Exhibit 1.

No testimony was taken at the hearing.

Procedural Background

The Claimant's attorney filed a Form AR-C with the Commission in the above-referenced claim. This document was filed with the Commission on August 19, 2019 for an accidental injury arising, out of an incident on February 22, 2018. Per this document, the Claimant asserted his entitlement to only initial workers' compensation benefits in the form of permanent partial disability and attorney fees. Per the Form AR-C, the Claimant briefly described the cause of injury and the part of body injured as follows: "Pulling carcasses apart and felt pain in shoulder."

Earlier, on or about June 26, 2018, the Respondents filed a Form AR-2 with the Commission accepting compensability of this claim.

This matter was scheduled for a pre-hearing telephone conference on December 18, 2019. However, prior to pre-hearing telephone conference, the parties resolved the issues pertaining to an additional permanent partial impairment rating and a controverted attorney's fee. Therefore, the telephone conference was canceled. The record demonstrates that Respondents No. 1 paid appropriate benefits in this respect. As a result, the parties asked that the claim be returned to the Commission's general files, which was done on December 30, 2019.

Since this time, there has been no action on the part of the Claimant to pursue this claim for any other additional workers' compensation benefits.

Consequently, on April 1, 2022, Respondents No. 1 filed with the Commission a Respondents' Motion to Dismiss due to a lack of prosecution of the above-referenced matter. Respondents No. 1 supplied the Claimant's attorney with a Certificate of Service of the foregoing pleading by duly depositing a copy of it in the United States Mail.

Therefore, on March 5, 2022, the Commission sent a letter to the Claimant and his attorney informing them of the motion, with a deadline of April 25, 2022 for filing a written objection.

No response from the Claimant's attorney or the Claimant was made in this regard.

Ultimately, on April 26, 2022, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for May 18, 2022, on Respondents No. 1's motion to dismiss.

On that same day, the Claimant's attorney sent the following e-mail to the Commission: "I confirm that Mr. Watlington [the Claimant] and I are waiving appearance. Thank you."

Said hearing was in fact conducted on Respondents No. 1's motion to dismiss as scheduled. Respondents No. 1's attorney appeared and essentially moved that the claim be dismissed without prejudice under the statute and Commission Rule because the Claimant has not requested a hearing for benefits in the past six months. Counsel also noted that all appropriate benefits have been paid on this claim, and the Claimant has returned to work for Cooper Tire.

Discussion

In the present matter, 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 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)

My review of the record shows that no bona fide request for a hearing has been made in the last six months in this claim for additional workers' compensation benefits. The Claimant and his attorney have not objected to the motion for dismissal, and they did not attend the hearing after being provided notice of same. Considering all the foregoing, I am compelled to conclude that the Claimant has abandoned this claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that Respondents No. 1's motion to dismiss this claim should be granted pursuant to Ark. Code Ann. §11-9-702 (d) (Repl. 2012) and Commission Rule 099.13. This claim is hereby 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 in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed a Form AR-C for additional benefits in August 2019. However, he has not requested a hearing on his claim within the past six months.
3. Respondents No. 1 filed a motion to dismiss with the Commission in February 2022.
4. The parties were provided reasonable notice of the motion to dismiss and hearing thereon.
5. The Claimant and his attorney did not appear at the hearing and have not objected to this claim being dismissed.
6. The evidence preponderates that Respondents No. 1's motion to dismiss is warranted.
7. That Respondents No. 1's motion to dismiss is hereby granted pursuant 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