

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H300134

ANGELA WILBURN, EMPLOYEE	CLAIMANT
QUAPAW CARE & REHABILITATION CENTER, LLC, A SUBSIDIARY OF CENTRAL ARKANSAS NURSING CENTER, LLC, EMPLOYER	RESPONDENT
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA (PA), INSURANCE CARRIER	RESPONDENT
ESIS, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 12, 2024

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

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

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

Statement of the Case

A hearing was held on February 9, 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 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the February 9, 2024, hearing and the documents held therein. Specifically, the Respondents' Hearing Exhibit consisting of twenty totaled pages was marked as Respondents' Exhibit 1; and Commission's Exhibit 1 consisting of sixteen numbered pages.

Discussion

On January 6, 2023, the Claimant's former attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant by way of a Form AR-C. According to this Form, the Claimant alleged that she sustained injuries to her left knee/fibula, hips, right knee, both shoulders, and other whole body on November 17, 2022, while performing employment duties for the respondent-employer. Per this document, the Claimant's then attorney requested both initial and additional workers' compensation benefits. In fact, her former attorney checked off all the boxes for every conceivable benefit under the law in connection with this claim.

Also, on January 6, 2023, the attorney sent a letter to the Commission requesting that the Commission ask the Respondents to state their position within fifteen days. Therefore, on January 10, 2023, the respondent-carrier filed a Form AR-2 with the Commission saying that the claim was accepted as compensable.

Subsequently, there was no activity on the claim.

However, the Claimant's attorney filed with the Commission a Motion to Withdraw from representing the Claimant in this matter on July 14, 2023. The Full Commission entered an order on July 25, 2023, granting the Claimant's attorney motion to withdraw from representing her on this claim.

Since this time, the Claimant has remained unrepresented/pro se. Most significantly, there has been no bona fide action on the part of the Claimant to prosecute her claim for workers'

compensation benefits, or otherwise pursue a resolution to this matter since the filing of the Form AR-C.

As a result, on December 20, 2023, the Respondents filed with the Commission a Respondents' Motion to Dismiss for a lack of prosecution, along with a Brief in Support of Motion to Dismiss. The Respondents notified the Claimant of their motion for dismissal of this claim by way of depositing a copy thereof in the mail with the United States Postal Service.

The Commission sent a letter notice on December 20, 2023, to the Claimant informing her of the Respondents' motion. Said letter was mailed to the Claimant by both first-class and certified mail. Per this correspondence, the Claimant was given a deadline of twenty days for filing a written response to the Respondents' motion to dismiss.

However, the United States Postal Service informed the Commission on January 11, 2024, that they were unable to deliver this item to the Claimant. The postal service returned this correspondence to the Commission as "unclaimed." The letter notice sent to the Claimant by first-class mail has not been returned to the Commission.

Nevertheless, there was no response from the Claimant.

The Commission sent a Hearing Notice dated January 9, 2024, to the parties letting them know 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 certified and first-class mail. Said hearing was scheduled for February 9, 2024, at 10:30 a.m., in Hot Springs, Arkansas.

Tracking information received by the Commission from the United States Postal Service shows that on January 18, 2018, they returned the certified mail to the Claimant because it was "unclaimed." However, the notice sent by first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel noted that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. Counsel further noted that there has been no attempt on the part of the Claimant to move forward with a hearing since the filing of the Form AR-C, which was done on January 6, 2023. Counsel indicated, among other things, that this claim should be dismissed, without prejudice due to all the afore reasons.

The record before me proves that the Claimant has failed to timely prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since the filing of the Form AR-C in January 2023, which occurred more than a year ago. Moreover, Claimant the failed to 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 compelled to find that the evidence preponderates that the Claimant has abandoned her claim. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim for workers' compensation benefits 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 in accordance with 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, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of the Form AR-C over a year ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was attempted 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, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of the law set forth above, this claim is hereby 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.

CHANDRA L. BLACK
Administrative Law Judge