

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002011

ZACKERY YORK,
EMPLOYEE

CLAIMANT

BELT CONSTRUCTION, INC.,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE COMPANY,
CARRIER\THIRD PARTY ADMINISTATOR

RESPONDENT

OPINION FILED FEBRUARY 25, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Pulaski County, Little Rock, Arkansas.

Claimant, *pro se*, failed to appear at the hearing.

Respondents were represented by Ms. Amy Markham, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 23, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

York – H002011

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 February 23, 2021, hearing. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

DISCUSSION

The Claimant sustained an admittedly compensable injury to his head, in the form of a laceration, on March 31, 2020, while working for the respondent-employer.

His previous attorney filed a Form AR-C with the Commission on June 29, 2020, wherein the Claimant alleged that on March 31, 2020, he fell 12 feet, landing on metal tracks of an excavator. The Claimant asserted that he sustained injuries to his head, back, left leg, left foot, and other whole body. Per the Form AR-C, the Claimant requested both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on April 13, 2020, wherein they accepted compensability of the claim. They specifically stated that they were paying appropriate benefits.

York – H002011

On December 9, 2020, the Claimant's former attorney filed a motion with the Commission, wherein she moved to withdraw from representing the Claimant in this workers' compensation claim. The Full Commission entered an order on December 22, 2020, granting the Claimant's attorney request to withdraw as counsel of record in this matter.

Since the filing of the Form AR-C, over almost eight months ago, there has been no action taken by the Claimant to prosecute his claim for workers' compensation benefits.

Therefore, on December 30, 2020, the Respondents' attorney filed with the Commission, a Motion to Dismiss of Respondents, along with a Certificate of Service to the Claimant.

On January 4, 2021, the Commission sent a Notice to the Claimant informing him of the Respondents' motion, and a deadline of January 25, 2021 for filing a written response with the Commission.

However, there was no response from the Claimant in this regard.

In a Hearing Notice dated January 29, 2021, the Commission advised the parties that the matter had been set for a hearing on the Respondents' motion for dismissal of the above-captioned claim

York – H002011

due to a lack of prosecution. Said hearing was scheduled for February 23, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission.

Still, there was no response from the Claimant regarding his claim for workers' compensation benefits that he filed for with the Commission, on June 29, 2020.

A hearing was in fact held on the Respondents' Motion to Dismiss. The documentary evidence shows that the United States Postal Service delivered to the Claimant's last known home address the Hearing Notice. The delivery information for the Certified Mail from the Postal Service shows that a party signed the receipt of delivery for this mail on February 13, 2021. Nevertheless, the Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney.

Counsel noted that this claim was accepted only as a compensable claim, in the form of a laceration to the Claimant's head. According to counsel for the Respondents, they denied the Claimant's alleged claim for a back injury. Counsel further noted that although some discovery was had in this claim, the Claimant has failed to prosecute his claim for workers' compensation benefits. As such, counsel moved that this claim be dismissed due

York – H002011

to a lack of prosecution pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13.

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits. However, the Claimant has failed to do so. Specifically, the Claimant has not requested a hearing, or otherwise attempted to prosecute his claim since the filing of the Form AR-C, which was over approximately eight months ago. Therefore, under these circumstances, I am compelled to find that the Claimant has failed to prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find that the Respondents' motion for the dismissal of this claim to be well taken due to all the foregoing reasons. As such, I further find that pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed without prejudice to the refiling within the applicable time period.

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. On or about March 31, 2020, the Claimant sustained a compensable injury to his head in the form of a laceration, while working for the respondent-employer. On June 29, 2020, the Claimant filed a Form AR-C, with this Commission asserting his entitlement to workers' compensation benefits.
3. Subsequently, on April 13, 2020, the respondent-insurance-carrier filed a Form AR-2, wherein they accepted the claim as compensable.
4. On December 9, 2020, the Claimant's attorney filed with the Commission, a motion asking that she be allowed to withdraw from representing the Claimant in this matter. The Full Commission granted the Claimant's attorney motion to withdraw on December 22, 2020.
5. Since the filing of the Form AR-C, over approximately eight months ago, the Claimant has taken no identifiable action of record to prosecute his claim for workers' compensation benefits.
6. On December 30, 2020, the Respondents filed with the Commission, a Motion to Dismiss of Respondents for want of prosecution.
7. The Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no bona fide action has been taken by the Claimant in furtherance of his claim, as he has failed to prosecute this matter.
8. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.
9. The Claimant failed to respond to the Notices of this Commission and did not appear at the hearing.

10. That the Respondents' motion to dismiss due to a lack of prosecution should be granted pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, without prejudice to the refiling of the claim within the applicable time period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits.

This dismissal is pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, without prejudice to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

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