

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007529

ZACHARY B. ZOMANT, EMPLOYEE

CLAIMANT

BOBBY THOMPSON, INC., EMPLOYER

RESPONDENT

**TRAVELERS INDEMNITY CO./
TRAVELERS INS. CO., CARRIER/TPA**

RESPONDENT

OPINION FILED DECEMBER 14, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Zachary B. Zomant, *pro se*, failed to appear at the hearing.

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

STATEMENT OF THE CASE

A hearing was held on December 10, 2021, 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 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 December 10, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference.

DISCUSSION

On September 21, 2020, Claimant suffered a compensable injury to his head, neck, back, right shoulder, and ribs while working for Respondent-Employer. On October 12, 2020,

Claimant's previous counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of September 21, 2020, and asserted his entitlement to all potential workers' compensation benefits. In the Form AR-C, Claimant's cause of injury was described as follows, "Claimant was rear ended while in course and scope of employment. Claimant sustained injuries to his head, neck, back, right shoulder, ribs and other whole body."

Respondent-Insurance-Carrier filed a Form AR-2 with the Commission on October 12, 2020. The carrier accepted the lumbar, thoracic, and neck contusion portion of the claim as medical only and paid some benefits.

On February 12, 2021, Claimant's attorney of record filed a Motion to Withdraw as counsel, which was granted by the Full Commission on March 3, 2021.

On September 24, 2021, Respondents filed a Motion to Dismiss requesting dismissal for failure to prosecute, along with a Certificate of Service to Claimant. On September 27, 2021, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated October 19, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for December 10, 2021, at 1:00 p.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A", Third Floor, 324 S. Spring Street, Little Rock, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was delivered on October 22, 2021, at 1:28 p.m., and a signature was obtained.

Therefore, a hearing was in fact conducted as scheduled on Respondents' request for dismissal. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

At the time of the hearing, counsel advised that Claimant had not taken any action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since he filed the Form AR-C. As such, Counsel requested that the claim be dismissed, with prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been approximately one (1) year and two (2) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional 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 September 21, 2020, Claimant suffered a compensable injury to his head, neck, back, right shoulder, and ribs while working for Respondent-Employer.

3. On October 12, 2020, Claimant’s previous counsel filed a Form AR-C with the Commission seeking all workers’ compensation benefits in this matter.
4. Also on October 12, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The carrier accepted the lumber, thoracic, and neck contusion portion of the claim as medical only and paid some benefits.
5. On February 12, 2021, Claimant’s attorney of record filed a Motion to Withdraw as counsel, which was granted by the Full Commission on March 3, 2021.
6. Respondents filed a Motion to Dismiss requesting dismissal for failure to prosecute on September 24, 2021.
7. Approximately one (1) year and two (2) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers’ compensation benefits.
8. Claimant has had ample opportunity to pursue this claim for workers’ compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
9. Respondents’ Motion to Dismiss for Failure to Prosecute is well founded.
10. Respondents’ Motion to Dismiss for Failure to Prosecute 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.
11. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed 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.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE