

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO.: H104750

COLBY ALLEN,
EMPLOYEE CLAIMANT

SCOTT EQUIPMENT COMPANY, LLC,
EMPLOYER RESPONDENT

GALLAGHER BASSETT SERVICES, INC.,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA) RESPONDENT

OPINION FILED JUNE 13, 2022

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

Claimant represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on June 8, 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). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely 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 the manner set by law.

The record consists of the June 8, 2022 hearing transcript. Also, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. The

Respondents introduced into evidence a Respondents' Hearing Exhibit Index consisting of nine (9) numbered pages; it was marked Respondents' Exhibit 1.

No testimony was taken at the hearing.

Background

The Claimant's attorney filed a Form AR-C with the Commission on June 4, 2021 asserting Claimant's entitlement to workers' compensation benefits. Per the Form AR-C, the Claimant's injury was described as: "During the course and scope of his employment he suffered injuries to his right hip, right leg, and both knees." The date of the Claimant's accidental work-related injury was March 18, 2021. According to this document, the Claimant's counsel marked all the boxes for both initial and additional workers' compensation benefits.

On or about June 8, 2021, the Respondents filed a Form AR-2 with the Commission accepting limited liability in this claim. Specifically, the claims adjuster wrote: "Form C response: Compensable Med Only."

At the time of the filing of the Form AR-C on June 4, 2021, Claimant's attorney requested a hearing. This claim was being processed for a prehearing telephone conference, when it was brought to my attention that the amount in dispute was less than \$2,500.00. Therefore, the claim was forwarded to the Clerk's Office for reassignment of it to the Legal Advisors' Division for mandatory mediation.

Counsel for the Claimant sent an e-mail to the Commission on September 13, 2021 notifying the legal advisor that the Respondents had agreed to pay the temporary partial disability owed the Claimant. In light of this, the Claimant was removed from the mediation docket and returned to the Commission's general files on September 13, 2021.

The Claimant has not attempted to pursue or otherwise resolve his claim for workers' compensation benefits since September 2021.

On December 30, 2021, the Respondents filed a motion to dismiss for failure to prosecute with the Commission. Counsel for the Claimant filed an objection to the motion with the Commission on January 5, 2022. At that time, the Claimant's attorney also requested a Full Hearing.

Therefore, the claim was scheduled for a Prehearing Telephone Conference with the parties for February 23, 2022. On the morning of February 23, the Claimant's attorney wrote to the Commission in an e-mail stating that the Respondents had agreed to an impairment evaluation. As a result, the Claimant's attorney requested that this matter be removed from the prehearing docket and returned to the Commission's general files, which was done.

Since this time, the Claimant has not requested a hearing on the merits or otherwise attempted to resolve his claim for workers' compensation benefits.

Therefore, on March 17, 2022, the Respondents filed a Motion to Dismiss for Failure to Prosecute. Respondents provided the Claimant's attorney with a copy of the afore pleadings by forwarding a copy of it to him in an e-mail.

On March 21, 2022 the Commission sent a notice to the Claimant and his attorney informing them of the Respondents' motion to dismiss, with a deadline for filing a written objection to the motion.

Tracking information received by the Commission from the United States Postal Service shows that on March 23, 2022, the notice was delivered to the Claimant's home and left with an individual.

On April 12, 2022 the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for May 10, 2022 on the Respondents' motion to dismiss.

The Claimant's attorney had a conflict in his schedule with the hearing date and the Respondents' motion to dismiss hearing was rescheduled for June 8, 2022.

Tracking information received by the Commission from the United States Postal Service did not show any delivery information on this item.

Still, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing to object to his claim being dismissed, but the Claimant's attorney appeared to object to the claim being dismissed. Counsel for the Claimant indicated that the Claimant has failed to respond to his telephone calls and other forms of communication. Nevertheless, the Respondents' attorney essentially asked that the claim be dismissed under Commission Rule 099.13 due to the Claimant's failure to prosecute his claim for workers' compensation benefits.

Discussion

The applicable Commission Rule 099.13 is outlined below, in relevant part:

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 evidence shows that the Claimant has failed to respond to the written notices of this Commission and did not appear at the hearing to object to the dismissal. Considering the foregoing, I am persuaded to conclude that the Claimant has abandoned his claim for workers' compensation benefits.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is warranted under the provisions of Rule 099.13 of this Commission. Said dismissal is without prejudice, to the refiling of this claim 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. A Form AR-C was filed in this matter asserting the Claimant's entitlement to workers' compensation benefits due to an incident occurring at work on March 18, 2021.
3. Since this time, the Claimant has failed to make a bona fide request for a hearing in this matter.
4. The Respondents filed a motion to dismiss this claim in March 2022.
5. Reasonable notice of the motion to dismiss and hearing thereon was tried on the parties. The Claimant has failed to respond to the notices of this Commission, and he did not appear at the hearing to object to his claim being dismissed. He has also lost contact with his attorney.
6. The evidence shows that the Claimant has abandoned his claim for workers' compensation benefits.
7. The evidence preponderates that the Respondents' motion to dismiss for want of prosecution is warranted.

8. That the Respondents' motion to dismiss is hereby granted pursuant to 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 pursuant to Commission Rule 099.13

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge