

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H104216

JONATHAN BURNS, EMPLOYEE	CLAIMANT
WAYNE HOLDEN & COMPANY, EMPLOYER	RESPONDENT
ACCIDENT FUND INS. CO. OF AMERICA, INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED MARCH 23, 2022

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

Claimant, pro se, not appearing.

Respondents represented by the Honorable Karen. H. McKinney, 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 March 22, 2022, in this 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 is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner prescribed by law.

The record consists of the hearing transcript of the March 22, 2022. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Respondents introduced into evidence, one exhibit consisting of thirteen pages. These have been marked as Respondent Exhibit 1.

No testimony was taken at the hearing.

Procedural Background

The Claimant's former attorney filed a Form AR-C with the Commission in the above-styled claim. This document was filed on May 13, 2021 for an alleged accidental injury arising out of an incident on January 12, 2021. Per these documents, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits. Per this Form AR-C, Counsel for the Claimant briefly described the cause of injury and the part of body injured as follows: "During the course and scope of his employment he suffered injuries to his back."

On or about May 26, 2021, the Respondents filed a Form AR-2 with the Commission controverting the compensability of this claim in its entirety.

This matter was scheduled for a pre-hearing telephone conference on July 14, 2021. However, at the time of the pre-hearing telephone conference, the parties stated that discovery had not been completed. As a result, the parties agreed that the claim should be returned to the Commission's general files, which was done.

Subsequently, on January 4, 2022, the Claimant's former attorney filed a motion to withdraw from representing the Claimant in this matter because he had lost contact with his client. The Full Commission entered an order on January 14, 2022 granting the Claimant's attorney motion to withdraw from representing him in this workers' compensation claim.

On January 18, 2022 the Respondents filed with the Commission a motion to dismiss due to a lack of prosecution.

Therefore, on January 15, 2022, the Commission sent a letter to the Claimant informing him of the motion, with a deadline of February 15, 2022 for filing a written objection. Information received by the Commission from the United States Postal Service shows that on February 1, 2022 this item was delivered to the Claimant's home and left with an individual.

Yet, there has been no response from the Claimant.

Ultimately, on February 17, 2022, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for March 22, 2022, on the Respondents' motion to dismiss. Information received by the Commission from the United States Postal Service shows that on February 19, 2022 this item was delivered to the Claimant's home and left with an individual.

However, there has been no response from the Claimant.

Said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing. The Respondents' attorney appeared and essentially moved that the claim be dismissed chiefly due to a lack of any attempt on the part of the Claimant to prosecute this claim since July 2021.

Discussion

In that regard, the applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subdivisions (a)(1)-(3) 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 as of July 2021, seemingly no bona fide action has been taken by the Claimant to pursue his claim for workers' compensation benefits. Furthermore, the Claimant has failed to respond to the notices of this Commission. The Claimant also failed to appear at the hearing to object to his claim being dismissed.

Therefore, 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 should be granted pursuant to Rule 099.13. This claim is hereby dismissed without prejudice, to the refile of it within the limitation period specified by law. As a result, a ruling pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) has been rendered moot and not addressed herein.

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 parties were provided reasonable notice of the motion to dismiss and hearing thereon.
3. The evidence preponderates that the Respondents' motion to dismiss due to want of prosecution is warranted.

4. That the Respondents' motion to dismiss is hereby granted pursuant Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

ORDER

Based on the foregoing findings of fact and conclusions of law, I find that pursuant to Rule 099.13, this claim is hereby dismissed without prejudice, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge