

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G807164**

KIMBERLY CLARDY, EMPLOYEE

CLAIMANT

UNIVERSITY OF ARKANSAS FAYETTEVILLE, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER

RESPONDENT

OPINION FILED **FEBRUARY 29, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by Aaron L. Martin, Attorney, Fayetteville, Arkansas.

Respondents represented by Robert H. Montgomery, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 18, 2024, a prehearing conference was conducted with the attorneys for the parties. A prehearing Order was entered that same day. Rather than schedule this matter for a hearing, the parties advised that a stipulated record would be submitted on the two issues set forth below, along with a brief from each party setting forth its position on how the law applies to the stipulated facts. The stipulated facts and the briefs of the parties along with portions of the Commission's file are blue backed and made a part of the record.

At the prehearing conference, the parties stipulated as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed October 3, 2018.

Thereafter, the parties submitted these Stipulated Facts as follows:

1. That the claimant was working as a temporary employee for the University of Arkansas on October 3, 2018;

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2. That the claimant alleges an accidental injury to her right shoulder on October 3, 2018;
3. That the claimant called Company Nurse on October 8, 2018 to report an on-the-job injury;
4. That the claimant received medical treatment at Pat Walker Health Center on October 9, 2018 and the bill related to that treatment was paid by respondents on November 4, 2018;
5. That no additional medical or indemnity benefits were paid relative to this claim after November 4, 2018;
6. That the claimant filed an AR-C with the Commission for initial and additional benefits on April 5, 2019;
7. That the respondent filed a Motion to Dismiss (MTD) for failure to prosecute on October 30, 2023;
8. That the claimant filed her Response in Opposition to the MTD on November 27, 2023, and expressed her wish to move forward with a hearing on her claim.

The issues presented to me on this stipulated record were:

1. Whether respondents' Motion to Dismiss should be granted.
2. Whether this claim is barred by the statute of limitations.

All other issues are reserved by the parties.

From a review of the entire record, including the stipulations of the parties, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on January 18, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact, as are the stipulated facts submitted on January 23, 2024.

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2. The claim should be and is hereby dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702(a)(4), §11-9-702(d) and AWCC R. 099.13 for want of prosecution.

3. The issue regarding the statute of limitations is moot in light of this dismissal.

FACTUAL BACKGROUND

Prior to the prehearing conference, respondent filed a Motion to Dismiss, alleging there had been no activity in this matter for over six months. In its prehearing questionnaire, respondents raised a statute of limitations defense. During the discussion with the parties at the prehearing conference, the parties advised that in lieu of a hearing, they could submit a set of stipulated facts regarding the two procedural motions, as a ruling for respondent on either would dispose of this matter.

After submitting the joint stipulations set forth below, the parties submitted briefs in support of their positions. The Employer's First Report of Injury form, the Intent to Controvert Claim form, the Report of Compensation Paid, the claimant's AR-C form, respondents' Motion to Dismiss, claimant's response to that motion, the prehearing questionnaires submitted by the parties, the prehearing order, the Joint Stipulations, and the briefs of the parties are blue backed and made a part of the record.

ADJUDICATION

In its Motion to Dismiss, respondents argued that pursuant to both Ark. Code Ann. §11-9-702(a)(4) and Ark. Code Ann. §11-9-702(d), this claim should be dismissed. In its responses to the prehearing questionnaire, respondents raised the defense that the statute of limitations had expired, and this matter could no longer be pursued. Finding for the respondents on the Motion to Dismiss, I do not need to determine if the statute of limitations has run.

In her brief opposing the Motion to Dismiss, claimant cited four decisions made by other administrative law judges to demonstrate that it is discretionary for me to dismiss this case or decline

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to do so. I read not only those cases but many other decisions, both at the trial level and on appeal to the Full Commission¹. I agree that the word “may” in Ark. Code Ann. §11-9-702 and Commission Rule 099.13 gives me latitude to deny the motion even though it is stipulated that more than six months have passed without claimant making a request for a hearing. In this matter, however, I believe it would be an abuse of discretion to deny the Motion to Dismiss.

In her contentions set forth in her prehearing questionnaire, claimant stated that “she sustained a compensable injury to her right shoulder on October 3, 2018.” Respondents agreed that claimant reported an injury on that date and paid for her treatment for that injury, which amounted to a visit to a physician. (Stipulations 1-5 above.) Respondents notified the Commission of its intent to controvert the claim. Claimant then filed an AR-C, seeking initial benefits for temporary partial disability, medical expenses, and attorney fees; on the same form, claimant requested additional temporary total disability benefits, additional medical expenses, and an attorney’s fees for a right shoulder injury. The boxes that were perhaps incorrectly checked are of no consequence to my decision as per *Dillard v. Benton County Sheriff’s Office*, 87 Ark. App. 379, 192 S.W.3d 287 (2004); the claim was submitted six months after the alleged injury.

What is of consequence, though, is that nothing happened in this case for four and a half years after the AR-C was filed. No additional medical records were referenced in claimant’s prehearing questionnaire except those from Pat Walker Health Center, which the parties stipulated were paid by respondents. That indicates there had been no additional treatment after the initial physical examination. The Intent to Controvert this claim was filed on October 23, 2018, over five years before the Motion to Dismiss was filed.

¹ In January 2024, the Full Commission directed that administrative law judges should not cite their opinions as precedent. However, that did not prohibit me from reading those opinions for guidance.

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Ark. Code. Ann §11-9-702 provides for initial claims:

(a)(4) 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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

For claims for additional benefits:

(d) If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Thus, regardless of how this matter is viewed—as a claim for initial benefits, additional benefits, or both—I believe it would be an abuse of discretion to deny a motion to dismiss a claim that has sat dormant for so long. As such, I am granting respondents’ motion. There does not appear to be any circumstances to mandate that this matter be dismissed with prejudice (see *Johnson v. Triple T Foods*, 55 Ark. App. 83, 929 S.W.2d 730 (1996) and *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988) for cases dismissed with prejudice). Therefore, this matter is dismissed without prejudice.

ORDER

Because of the dismissal of this claim pursuant to Rule 13, the other issue submitted on Stipulated Facts for determination will not be addressed. Respondent's Motion to Dismiss is granted. The instant claim is dismissed without prejudice.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE