

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H306174

ALISHA COTTON, EMPLOYEE	CLAIMANT
OUACHITA COUNTY MEDICAL CENTER, EMPLOYER	RESPONDENT
AHA WORKERS' COMPENSATION SIT, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED JUNE 10, 2024

Hearing before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on June 5, 2024, in the present claim for workers' compensation benefits 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 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was served on all parties to their last known address, in the manner prescribed by law.

No testimony was taken during the dismissal hearing.

The record consists of the transcript of the June 5, 2024, hearing and the documents held there. Admitted into evidence was Commission’s Exhibit 1 consisting of four (4) pages of forms, pleadings, and correspondence from the Commission’s file on the claim; and Respondents’ Exhibit 1 comprising of pleadings, correspondence, unexecuted authorizations, discovery requests, and various other forms related to this claim, consisting of ten (10) pages. Moreover, in order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”), and without objection, I have blue-backed to the record, correspondence and accompanying documents from the Commission’s file on the claim, consisting of four (4) totaled pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

Procedural Background

On September 21, 2023, the Claimant’s former attorney filed with the Commission a claim for Arkansas workers’ compensation benefits on behalf of the Claimant by way of a Form AR-C. According to this document, the Claimant provided the following description of her alleged work-related accidental injury: “Claimant was injured during the course and scope of her employment. Claimant sustained injuries to her right knee, right elbow, and other whole body.” Per the Form AR-C, the Claimant requested both initial and additional workers’ compensation benefits. The date of the Claimant’s work-related accident happened on July 23, 2023.

The respondent-carrier filed a Form AR-2 with the Commission on September 25, 2023, confirming that they were accepting this matter as a medical only claim. On that same day, the claims specialist further notified the Commission’s Director Operations/Compliance, among other things, that the Claimant was working her normal sedentary duty. She also informed the

Commission that there were not any known issues with the claim, and that all proper medical treatment was being paid.

Subsequently, there was no action taken on this claim.

Therefore, on January 12, 2024, the Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant in this matter. There being no objection to the motion for the Claimant's attorney to withdraw as counsel of record, the Full Commission entered an Order on February 8, 2024, granting the motion.

After this action, there was no bona fide request for a hearing made with respect to this claim.

Conversely, on March 21, 2024, the Respondents filed a Motion to Dismiss for Failure to Prosecute. The Respondents' attorney certified that a copy of the foregoing pleading was served on the Claimant via U.S. Mail. For their motion for dismissal, the Respondents primarily asserted that the Claimant has not sought any type of bona fide hearing before the Workers' Compensation Commission over the last six (6) months.

The Commission sent a letter notice on March 25, 2024, to the Claimant informing her of the Respondents' motion for dismissal of her claim. Said letter was mailed to the Claimant by both first-class and certified mail. Per this correspondence, the Claimant was given a deadline of twenty (20) days for filing a written response to the Respondents' motion to dismiss.

Information received by the Commission from the United States Postal Service shows that they delivered this item to the Claimant. The electronic return receipt bears the Claimant's printed name, as well as her cursive signature. Moreover, the letter notice mailed to the Claimant via first-class mail has not been returned to the Commission.

Yet, there has been no response from the Claimant in this regard.

Subsequently, on April 25, 2024, the Commission sent an Amended Notice of Hearing to the parties letting them know that a dismissal hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. The hearing notice was sent to the Claimant via certified and first-class mail. Said hearing was set for June 5, 2024, at 9:30 a.m., in El Dorado, Arkansas.

Tracking information received by the Commission from the Postal Service shows that as of the date of the dismissal hearing, the Post Office was unable to deliver this item to the Claimant. This item was returned to the Commission. On the contrary, the notice sent to the Claimant via first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant.

On June 5, 2024, a dismissal hearing was in fact conducted on the Respondents' motion for dismissal of this claim as scheduled. The Claimant did not appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel for the Respondents asserted that the Claimant has failed to promptly prosecute this claim for workers' compensation benefits. The Respondents' attorney argued that there has been no attempt whatsoever on the part of the Claimant to move forward or otherwise prosecute this claim via a bona fide request for a hearing on the merits within the last six (6) months and/or since the filing of the Form AR-C. Therefore, counsel asserted that the Claimant has failed to prosecute her claim for workers' compensation benefits. As a result, the attorney for the Respondents asked that the claim be dismissed due to a failure to prosecute, with or without prejudice, because the Claimant has not requested a hearing within the last six (6) months. The Respondents' attorney moved that the claim be dismissed under Ark. Code Ann. §11-9-702 and

Commission Rule 099.13. Of note, counsel stated that all appropriate benefits have been paid on this claim.

The evidence before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. In that regard, the Claimant has not requested a hearing since her former attorney filed the Form AR-C, which was done more than six (6) months ago. Of significance, the Claimant did not appear at the hearing to object to her claim being dismissed, and she has not responded to the notices of this Commission, despite having received notice of the motion for dismissal. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, *without prejudice*, to the refiling of it within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on 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 Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since her former attorney requested filed the Form AR-C, which was more than six (6) months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits based upon the relevant provisions of the specified statute, Ark. Code Ann. 11-9-702, and Rule 099.13 of this Commission.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.

5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refileing of it within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refileing of it, within the limitation period specified by law.

CHANDRA L. BLACK
Administrative Law Judge