

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H106792

ROBERT A. GEORGE, EMPLOYEE

CLAIMANT

**GREENHEAD FARMING COMPANY, INC.,
EMPLOYER**

RESPONDENT

**AGRICULTURAL GROUP-COMPENSATION SIF,
CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 6, 2022

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

Claimant, Mr. Robert George, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 5, 2022, 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 May 5, 2022, 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. Respondents' Exhibit packet containing nineteen (19) pages was labeled as Respondents' Exhibit No. 1 and consisted of the following: 1) e-mail communication between the attorneys regarding a lack of communication with Claimant; 2) notification from the Commission regarding a cancellation of the full hearing scheduled for

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January 21, 2022; 3) Claimant's counsel's motion to withdraw; 4) the Full Commission's opinion of February 25, 2022, granting the motion to withdraw; 5) Respondents' letter motion to dismiss; 6) the Commission's March 9, 2022, notice to Claimant regarding the filing of Respondents' motion to dismiss; and 7) the April 5, 2022, Notice of Hearing sent to the parties regarding the setting of the hearing on the Motion to Dismiss. Respondents' Exhibit No. 1 was admitted into evidence.

DISCUSSION

Claimant alleged that he sustained an injury to his right knee on April 13, 2021, while working for the Respondent-Employer. On August 13, 2021, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of June 8, 2020, and asserted his entitlement to workers' compensation benefits.

On August 24, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim and stating that Claimant had not proven that his injury was within the course and scope of employment.

On September 16, 2021, Claimant's attorney filed an entry of appearance and request for a hearing in the matter. Pursuant to the November 15, 2021, prehearing order, a full hearing was scheduled for January 21, 2022. Due to communication issues between Claimant and his attorney that resulted in a delay in discovery, the full hearing was cancelled, and the claim was returned to the Commission's general files on January 13, 2022. Soon thereafter, on February 15, 2022, Claimant's counsel filed a motion to withdraw, which was granted by the Full Commission on February 25, 2022.

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As Claimant had not taken any action to further prosecute his claim after the cancellation of the full hearing, on March 8, 2022, Respondents filed with the Commission a letter motion to dismiss for lack of prosecution. On March 9, 2022, 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 April 5, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' motion to dismiss for lack of prosecution. Said hearing was scheduled for May 5, 2022, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room "B", Third Floor, 324 S. Spring Street, Little Rock, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested-- and First-Class Mail. There was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' motion to dismiss for lack of prosecution. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that Claimant had been less than cooperative with discovery, which had resulted in a continuance of the scheduled full hearing. He also noted that Claimant's attorney had then been allowed to withdraw from the claim. In sum, Claimant had not taken further action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since the full hearing had been cancelled. As such, Counsel requested that the claim be dismissed.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, Claimant's alleged work-related injury occurred on

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April 13, 2021, for which he filed a Form AR-C on August 13, 2021, with the Commission. The matter was scheduled for a hearing; however, a continuance was granted due to a lack of communication between Claimant and his attorney and thus a delay in obtaining Claimant's deposition. Claimant's attorney withdrew from the matter shortly thereafter. There has been no response from Claimant since that time. Claimant did not appear at the dismissal hearing.

Therefore, after consideration of the evidence presented, I find Respondents' motion to dismiss this claim to be well supported. Furthermore, I find that pursuant to Commission Rule 099.13, this claim for benefits should be dismissed for failure to prosecute. The dismissal is without prejudice.

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 August 13, 2021, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of April 13, 2021, and asserted his entitlement to workers' compensation benefits.
3. On August 24, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim and stating that Claimant had not proven that his injury was within the course and scope of employment.
4. On January 13, 2022, a continuance was granted on a full hearing and the matter was returned to the Commission's general files.
5. On February 25, 2022, the Full Commission granted Claimant's counsel's motion to withdraw.
6. On March 8, 2022, Respondents filed with the Commission a letter containing a motion to dismiss for lack of prosecution.

7. Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, Claimant's alleged work-related injury occurred on April 13, 2021, for which he filed a Form AR-C on August 13, 2021, with the Commission. The matter was scheduled for a hearing; however, a continuance was granted due to a lack of communication between Claimant and his attorney and thus a delay in obtaining Claimant's deposition. To date, Claimant has failed to prosecute his claim for workers' compensation benefits.
8. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.
10. 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 Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE