

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: G900114

SYLVESTER HENDERSON,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER COMPANY,
EMPLOYER

RESPONDENT

CENTRAL ADJUSTMENT COMPANY, INC.,
THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED MAY 9, 2022

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

Claimant represented by the Honorable Gregory R. Giles, Attorney at Law, Texarkana, Arkansas. Mr. Giles waived his appearance at the hearing.

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 April 13, 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). The sole issue for determination is whether this should be dismissed due to the Claimant's failure to timely prosecute/pursue 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 set by law.

The record consists of the transcript of the April 13, 2022 hearing. The entire Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents introduced a Documentary Exhibit into evidence consisting of ten (10) pages, which was marked as Respondents' Exhibit 1. Their second exhibit included an Evidentiary Exhibit, which consisted of one page. It was marked as Respondents' Exhibit 2.

No testimony was taken at the dismissal hearing.

Procedural History

The Claimant's attorney filed a Form AR-C with the Commission on February 20, 2019 for Arkansas workers' compensation benefits. The following description of the Claimant's alleged injury was provided: "Left knee – picking up tire twisted knee felt and heard "pop." The date of the Claimant's alleged accident was December 6, 2018. Per this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits.

On or about January 8, 2019, the Respondents filed a Form AR-2 with the Commission denying this as a compensable claim. Specifically, they stated: "Claim is being denied as this medical condition did not arise out of and in the course of employment."

Since the filing of the Form AR-C over two years ago, there has been no action whatsoever taken by the Claimant to pursue his claim for workers' compensation benefits.

Therefore, on March 21, 2022, the Respondents filed with the Commission a Respondents' Motion to Dismiss, with a certificate of service to the Claimant's attorney by way of depositing a copy of the foregoing pleading in the United States Mail.

On March 23, 2022 the Commission sent a notice of the Respondents' motion to dismiss to the Claimant and his attorney with a deadline of April 11, 2022 for filing a written objection to the motion.

The Claimant's attorney wrote the following letter to the Commission on March 23, 2022:

I've spoken with Mr. Henderson [the Claimant] concerning this workers' compensation claim. He advises that he continues to work at Cooper Tire and at this point has no objection to voluntarily dismissing the claim. Mr. Henderson understands given date of injury that this will cause the statute [sic] of limitations to run in his case. He no longer wishes to pursue the matter.

Thank you for your consideration.

On March 31, 2022, a Notice of Hearing was mailed to the parties letting them know that a dismissal hearing on the Respondents' motion to dismiss was scheduled for April 13, 2022.

Information received by the Commission from the United States Postal Service shows that both notices from the Commission were delivered to the Claimant's home address.

A hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents asked that this claim be dismissed for a lack of prosecution, and because the Claimant has indicated he has no intention of pursuing his claim.

Discussion

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

Specifically, Ark. Code Ann. §11-9-702 (a)(4) reads:

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.

Similarly, Commission Rule 099.13 provides:

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 not requested a hearing since the filing of his claim for workers' compensation of his Form AR-C, which was done over three years ago. Furthermore, the Claimant's attorney has notified the Commission that the Claimant does not object to his claim being dismissed.

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 should be granted under the provisions of Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13. 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. The parties were given reasonable notice of the motion to dismiss and the hearing thereon.
3. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is well founded. Hence, the Claimant agrees with his claim for workers' compensation benefits being dismissed.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702(a)(4) and 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 under the provisions of Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13 without prejudice, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge