

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H205909

TRISTEN G. HAMMON, EMPLOYEE	CLAIMANT
FOLSOM TREE SERVICE, LLC, EMPLOYER	RESPONDENT
LM INSURANCE CORPORATION, INSURANCE CARRIER	RESPONDENT
LIBERTY MUTUAL GROUP, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 8, 2023

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

Claimant, pro se, appeared for the hearing.

Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on July 19, 2023, in the present matter for a determination of whether this case should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) 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 July 19, 2023, hearing and the documents contained therein. The Respondents' Documentary Exhibit consisting of fourteen numbered pages was marked as Respondents' Exhibit 1. Additionally, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Procedural History

On October 11, 2022, the Claimant's former attorney filed with the Commission a claim for Arkansas workers' compensation benefits by way of a Form AR-C. Specifically, counsel for the Claimant alleged that on August 9, 2022: "Claimant was in the scope and course of employment and sustained injuries to his right lower leg with multiple bone breaks, and other whole body." Counsel checked all the boxes for both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on August 22, 2022, accepting this a compensable injury for a right leg injury.

On December 9, 2022, the Claimant's attorney moved to withdraw as counsel of record for the Claimant in this case. There being no objection to the motion to withdraw as counsel for the Claimant, the Full Commission granted the motion pursuant to an order filed on December 20, 2022.

Since this time and the filing of the Form AR-C, there has been no noticeable action on the part of the Claimant to prosecute his claim for workers' compensation benefits, or otherwise pursue or bring his claim to a resolution.

On May 12, 2023, the Respondents filed with the Commission a Motion to Dismiss and Incorporated Brief in Support wherein they asked that the claim be dismissed for a lack of prosecution on the part of the Claimant. Counsel also included a Certificate of Service to the Claimant demonstrating that they served a copy of the forgoing pleading on the Claimant by depositing a copy thereof in the United States Mail addressed to his last known address.

The Commission sent a letter-notice to the Claimant's address listed in the Commission's file on May 18, 2023. Per this correspondence, the Claimant was given a deadline of twenty days,

for filing a written response to the Respondents’ motion. The notice was sent to the Claimant via first-class and certified mail. The Claimant signed for delivery of this item to his home on May 20, 2023.

On July 13, 2023, the Claimant wrote to the Commission stating, “I do not want my case dismissed. I’m still receiving medical treatment...”

Pursuant to a Hearing Notice mailed on June 12, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents’ motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for July 19, 2023, at 12:00 p.m., at the Arkansas Workers’ Compensation Commission, in Little Rock, Arkansas.

The documentary evidence of record demonstrates that the Commission mailed the Notice of Hearing to the Claimant via first-class and certified mail. Information received by the Commission from the United States Postal Service shows that the notice was delivered to the Claimant home, on June 26, 2023. The electronic return receipt bears the Claimant’s signature.

Subsequently, on July 19, 2023, a dismissal hearing was in fact conducted on the Respondents’ motion for dismissal as scheduled. The Claimant and his granddad, Mr. Lyle Brennan, appeared for the hearing. The Respondents appeared through their attorney.

Counsel noted that all appropriate benefits have been paid and that the Claimant is still receiving medical treatment and Respondents have authorized some future medical care. Counsel asked that the Form AR-C be dismissed at this time. After some discussion, the Claimant agreed with his claim being dismissed.

Here, the Claimant has not identified any issue that requires litigation or participation by an Administrative Law Judge/ALJ, and there has been no request for a hearing since the filing for

the Form AR-C. The Claimant is currently receiving medical benefits and does not object to his case being dismissed.

Under these circumstances, I am compelled to find that this claim should be and is hereby dismissed, without prejudice to the refiling of it with the limitation period specified by law. This dismissal is hereby made under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission.

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 Respondents filed with the Commission a motion to dismiss this claim, for which a hearing was held.
3. The evidence preponderates that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. Of significance, the Claimant does not object to his claim being dismissed.
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 is hereby granted without prejudice pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, to the refiling 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 refiling of it, within the limitation period

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specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge