

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H202631

ABRAHAM KASSEES, EMPLOYEE	CLAIMANT
BEST PARK, LLC, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
SUMMIT CONSULTING, LLC, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 28, 2023

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

Claimant, pro se, failed to appear at the hearing.

Respondents represented by the Honorable Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on July 12, 2023 in the above-captioned case pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether this claim for workers' compensation benefits should be dismissed due to the Claimant's failure to prosecute it 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 attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the July 12, 2023, hearing and the documents contained therein. Additionally, the entire Commission’s file has been made a part of the record. It is hereby incorporated herein by reference.

Discussion

On April 27, 2022, the Claimant’s attorney filed a Form AR-C with the Commission asserting his entitlement to Arkansas workers’ compensation benefits. He alleged that the Claimant sustained compensable injuries to his back, left side, left knee, and groin on March 17, 2022, while performing his employment duties for the respondent-employer. Counsel asserted the Claimant’s entitlement to only additional workers’ compensation benefits. Specifically, counsel requested additional workers’ compensation benefits for the Claimant, namely in the form of temporary total disability, temporary partial disability, rehabilitation and an attorney’s fee in connection with this claim.

The respondent-insurance carrier filed a Form AR-2 with the Commission on April 4, 2022, accepting this as a medical only claim. Further, the adjuster explicitly stated on this form the following: “Partial Denial/The employer/carrier is denying indemnity in whole. Compensable medical benefits. Light duty work is available with the employer.”

On May 10, 2022, the claims specialist for the carrier wrote a letter to the Commission. Specifically, the specialist wrote: “In response to the Form AR-C filed in this matter, the Respondents have controverted the above referenced claim its entirety.”

As a result, the prehearing process was started by the Commission. On October 26, 2022, a Prehearing Order was entered in this matter setting the claim for a full hearing on November 30, 2022. However, on November 18, 2022, the parties notified the Commission that they had reached a settlement agreement in this matter and asked that the full hearing be removed from the docket,

which was done. At that time, the parties filed with the Commission a proposed Joint Petition for Final Settlement and a Joint Petition Hearing was scheduled in lieu of the full hearing. The Respondents filed with the Commission a revised settlement agreement changing some of the language regarding the previous medical expenses.

On November 28, 2022, the Claimant's attorney notified the Commission via email that the Claimant was having second thoughts about the settlement and that he needed a little more time to think about it. Therefore, the settlement hearing was removed from the docket and the claim was forwarded to the Clerk's Office for the case to be returned to the Commission's general files.

On December 22, 2022, the Claimant's attorney filed a motion to withdraw from representing the Claimant in his claim for workers' compensation benefits. The Full Commission granted the motion for the Claimant's attorney to withdraw from representing the Claimant in this matter on January 5, 2023.

The Respondents filed a motion to dismiss the case on January 6, 2023, with a certificate of service to the Claimant, as a copy of the above pleading was mailed to the Claimant. The Claimant requested a hearing on February 10, 2023, and he also asked for more time to prepare. Hence, the prehearing process was started all over again on February 13, 2023. However, the Claimant notified the Commission on March 1 that he needed more time to get well and finish his ongoing medical tests. Therefore, on March 6, 2023, the Claimant was given an additional ninety (90) days to recuperate and prosecute his claim. As a result, the Respondents' motion for dismissal of this claim was held in abeyance.

Yet, during this three-month period of time, the Claimant did not take any action to resolve his claim and he failed to request a hearing.

Therefore, on June 6, 2023, the Respondents' attorney sent an email to the Commission requesting a ruling on their motion because he had not heard from the Claimant.

Pursuant to a Hearing Notice dated June 13, 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. The notice was sent to the Claimant via certified and first-class mail. Said hearing was scheduled for July 12, 2023, at 1:00 p.m. in Little Rock, Arkansas at the Commission.

The hearing notice was returned to the Commission marked unable to locate any delivery information.

Still, there has been no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel explicitly noted that the Claimant has failed to promptly prosecute his claim for workers' compensation benefits since the filing of the Form AR-C in April 2022. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice due to a lack of prosecution.

The record before me proves that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. The Claimant failed to appear at the hearing to object to his claim being dismissed and he has not responded to the hearing notice of this Commission. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has abandoned his claim. Accordingly, 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 with 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 Respondents filed with the Commission, a motion for dismissal of this claim due to a lack of prosecution of by the Claimant, for which a hearing was held.
3. The Claimant has not made a bona fide request for a hearing since his attorney was allowed to withdraw from representing him in this matter, which was some eight months ago. Hence, the evidence preponderates that the Claimant failed to prosecute his claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was tried 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*, 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 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 specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge