

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H102375

ROBERT RAY, EMPLOYEE

CLAIMANT

MACON CONSTRUCTION, LLC, EMPLOYER

RESPONDENT

**TRAVELERS INDEMNITY CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 22, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in McGehee, Desha County, Arkansas.

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

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

STATEMENT OF THE CASE

A hearing was held on August 16, 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 August 16, 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 offered an exhibit packet consisting of twenty-three (23) pages of documents related to the claim, including the Claimant's request for production of documents and interrogatories; Respondents' counsel's entry of appearance; the Respondents' discovery requests; authorization for release of medical records and information

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forms; the Claimant's attorney's letter request for withdrawal of representation; the Commission's letter to the Claimant regarding his attorney's request to withdraw; the Full Commission's order granting the request to withdraw; Respondents' letter motion to dismiss; Notice from the Commission to the Claimant regarding Respondents' letter motion to dismiss; email correspondence regarding the setting of the hearing on the Respondents' letter motion to dismiss; and an Amended Notice of Hearing on Respondents' letter motion to dismiss. The exhibit packet was labeled as Respondents' Exhibit #1 and was admitted.

DISCUSSION

Claimant alleged that he sustained an injury to his right shoulder and low back on February 23, 2021, while working for the Respondent-Employer.

On March 9, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable and paying benefits.

On April 5, 2021, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of February 23, 2021, and alleged the following: "Claimant was moving a metal beam when it broke and fell on the right side of his back. He sustained injuries to his back, right shoulder, and other whole body." Claimant asserted his entitlement to initial and additional workers' compensation benefits.

On May 23, 2022, Claimant's counsel filed a motion to withdraw as attorney of record, noting the fact that Claimant had passed away. The Full Commission granted the request to withdraw on June 2, 2022.

On June 10, 2022, Respondents filed with the Commission a letter motion to dismiss for failure to prosecute. Also on June 10, 2022, the Commission sent a Notice to Claimant advising

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him of Respondents motion and a deadline for filing a written response. However, there was no response from the Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated July 1, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents letter motion to dismiss. Said hearing was scheduled for August 16, 2022, at 12:00 p.m., at the McGehee Criminal Justice Facility Courtroom, 2412 US-65 North, McGehee, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested-- and First-Class Mail. United States Postal Service records indicated that the Certified Mail was delivered to Claimant’s home address on July 7, 2022, at 9:47 a.m., and a signature was obtained. There was no response from the Claimant regarding the hearing notice.

Therefore, a hearing was in fact conducted as scheduled on Respondents letter motion to dismiss for failure to prosecute. Respondents appeared through their attorney. However, the Claimant failed to appear at the hearing.

Counsel advised that Respondents had accepted the claim as compensable and had paid medical and indemnity benefits. Counsel also indicated that he had received information from the Claimant’s relatives that the Claimant had recently passed away from a condition unrelated to this claim. Counsel also noted that the Claimant’s previous attorney’s request to withdraw from representation, noting the Claimant’s recent death, had been granted by the Full Commission. In light of the Claimant’s death and the fact that no effort had been made to prosecute the claim for a significant period of time, Respondents requested that the claim be dismissed without prejudice pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant had sufficient time to pursue his claim for workers' compensation benefits. Counsel for Respondents advised that all appropriate benefits had been paid. It has been approximately one (1) year and four (4) months since the Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents letter motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

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 Claimant alleged that he sustained an injury to his right shoulder and low back on February 23, 2021, while working for the Respondent-Employer.
3. On March 9, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable and paying benefits.
4. On April 5, 2021, Claimant's attorney of record at the time filed a Form AR-C with the Commission, asserting his entitlement to initial and additional workers' compensation benefits.
5. Claimant's counsel's motion to withdraw as attorney of record was granted by the Full Commission on June 2, 2022.

6. On June 10, 2022, Respondents filed with the Commission a letter motion to dismiss for failure to prosecute.
7. Approximately one (1) year and four (4) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
8. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
9. Respondents' letter motion to dismiss for failure to prosecute is well founded.
10. Respondents' letter motion to dismiss should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
11. 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 Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

**KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE**