

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H008680

YVONNE REED,
EMPLOYEE

CLAIMANT

CENTRAL ARKANSAS DEVELOPMENT COUNCIL,
EMPLOYER

RESPONDENT

ATA WC TRUST/RISK MANAGEMENT RESOURCES,
CARRIER/THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED JANUARY 10, 2023

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

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

Respondents represented by Ms. Melissa Wood, 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 January 4, 2023, in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to promptly prosecute it pursuant to the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was had on all parties in the manner prescribed by law.

The record consists of the hearing transcript from January 4, 2023. Without any objection, the entire Commission's file has been made a part of the record. It is hereby incorporated herein

by reference. Similarly, the Respondents introduced into evidence a Respondents' Hearing Exhibit Index consisting of nineteen (19) numbered pages, which was marked Respondents' Exhibit 1.

No testimony was taken at the hearing.

Background

The following procedural history applies to this claim:

The Claimant wrote a letter to the Commission in the above-styled claim on January 31, 2022 to request a hearing on her claim. My review of the documentary evidence demonstrates that the Claimant was involved in a minor motor vehicle accident on October 24, 2020 while working for the respondent-employer.

On or about November 9, 2020 the Respondents (the carrier) filed a Form AR-2 with the Commission. At that time, the Respondents accepted the claim as compensable for the Claimant's October 24, 2020 accidental injury. The carrier accepted this claim for an injury to the Claimant's left arm. Then, on January 25, 2022 the Respondents denied the claim on the grounds that there were no objective findings of an injury to the Claimant's left shoulder or cervical spine.

Pursuant to the Claimant's January 2022 request for a hearing on the merits, this claim was scheduled for a Prehearing Telephone Conference on March 29, 2022. However, at the time of the prehearing conference, the Claimant stated that she wanted to seek legal representation in her workers' compensation claim. Therefore, following the telephone conference the claim was returned to the Commission's general files.

Consequently, there was no action taken on the part of the Claimant to prosecute, resolve, or pursue her claim.

The Claimant retained an attorney on May 3, 2022. Her attorney filed a letter of representation and a Form AR-C with the Commission on that same date. Per this document, the

Claimant's alleged injury was due to the October 24, 2020 motor vehicle accident. On the Form AR-C, the Claimant's attorney checked all of the boxes for both initial and additional benefits workers' compensation benefits. However, a request for a hearing was not made at that time.

Therefore, on November 4, 2022 the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute. The Respondents served a copy of the foregoing pleading on the Claimant's attorney via electronic mail.

On November 7, 2022, the Claimant and her attorney were given a deadline of November 28, 2022, to file a written objection to the motion. The Claimant received a copy of this letter from the United States Postal Service by picking it up at the local post office, in El Dorado, Arkansas.

The Claimant's attorney wrote the following letter to the Commission on November 15, 2022:

Dear Judge Black:

Thank you for your letter of November 7, 2022. Ms. Reed respectfully requests that the Motion to Dismiss be denied. Given the circumstances, Ms. Reed respectfully requests that a hearing be scheduled concerning the issue of compensability.

As a result, the prehearing process was resumed. However, on December 7, 2022 the Claimant's attorney wrote another letter to the Commission. It reads:

Dear Judge Black:

I am writing you on behalf of the Claimant, Ms. Yvonne Reed to withdraw our hearing request and withdraw our objection to voluntary dismissal. Ms. Reed continues to be employed by Central Arkansas Development Council, and she no longer wishes to pursue this claim. At the time of this alleged work related accident that occurred on October 24, 2020 which was the result of a motor vehicle accident, Ms. Reed was already under the care of a chiropractor as a result of a work related accident that had occurred on October

4,¹ 2020. Based upon the review of the prior medical records and records of treatment following her October 24th event, it appears at best she had a temporary aggravation of a pre-existing condition. A brief period of TTD benefits which was initially accepted and paid and she was able to subsequently return to work. She continues to successfully maintain her job at Central Arkansas Development Council and no longer wishes to pursue this claim. Thank you for your consideration.

Subsequently, on December 9, 2022, the Commission issued a Notice of Hearing, which was sent via certified mail to all parties letting them know that a hearing on the Respondents' motion for dismissal was scheduled for January 4, 2023. Based on information received from the Postal Service, the Notice of Hearing was delivered to the Claimant when she picked it up from the local Post Office, in El Dorado, Arkansas on December 17, 2022. The Claimant's attorney also received a copy of the Hearing Notice.

On December 20, 2022, the Claimant's attorney filed with the Commission a formal request to withdraw from representing the Claimant in this workers' compensation claim. The Claimant notified the Commission via email that she does not object to her attorney withdrawing from her claim. The Respondents do not object to the Claimant's attorney withdrawing from the claim.

Since this time, the Claimant has objected to her claim being dismissed.

Thus far, there has been no bona fide undertaking of any kind on the part of the Claimant to resolve or otherwise pursue her claim.

Nevertheless, said hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant did not appear at the hearing to object to her workers' compensation claim being dismissed. Her attorney waived his appearance at the hearing. However, the

¹ The Claimant's attorney sent an email to the Commission on December 8, 2022 stating "My letter incorrectly states the 10/4/20 MVA was work-related. It should have stated another MVA. That accident was not work-related."

Respondents' attorney appeared for the hearing. During the hearing, the Respondents' attorney moved that this claim be dismissed without prejudice due to the Claimant's failure to prosecute it. Counsel specifically asked that the dismissal be made under Ark. Code Ann. §11-9-702 and Commission Rule 099.13. The applicable law and Commission Rule are set forth below.

Discussion

In that regard, Ark. Code Ann. §11-9-702(a)(4) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

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.

Commission Rule 099.13 reads:

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 record shows that more than six (6) months have elapsed since the filing of the Form AR-C in this claim for workers' compensation benefits. However, since this time, the

Claimant has failed to make a bona fide request for a hearing with respect to this claim. Thus, this is an appropriate basis for dismissal.

Therefore, 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 is called for pursuant to Commission Rule 099.13. Consequently, this claim is respectfully dismissed without prejudice, to the refiling of it within the limitation period specified by law. Moreover, considering that this claim has now been dismissed pursuant to Rule 099.13, the issue of it being dismissed under the provisions of Ark. Code Ann. §11-9-702 has been rendered moot not discussed herein this Opinion. Of note, I realize that the Claimant has now objected to her claim being dismissed. Yet, she has failed to identify any justiciable issues and she has not requested a hearing on the merits.

Additionally, my review of the Claimant's attorney's motion to withdraw from representing her complies with AWCC Advisory 2003-2. Therefore, the motion to withdraw is hereby granted.

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. Reasonable notice of the dismissal hearing was provided to all the parties in the manner prescribed by law.
3. The Claimant has failed to prosecute her claim for workers' compensation benefits.
4. The evidence preponderates that the Respondents' Motion to Dismiss for Failure to Prosecute is warranted.

5. That the Respondents' motion to dismiss is hereby granted pursuant to Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period. Therefore, an adjudication of the claim being dismissed under the provisions of Ark. Code Ann. §11-9-702 has been rendered moot and not discussed herein this Opinion.
6. The Claimant's attorney is hereby relieved as counsel of record in this matter.

ORDER

Based on the foregoing findings of fact and conclusions of law, this claim is respectfully dismissed without prejudice under Rule 099.13, to the refiling of it within the limitation period specified by law. The Claimant's attorney's motion to withdraw from representing her in this matter is hereby granted.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge