

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H206910

AMANDA J. ROCHELLE-LEWIS,
EMPLOYEE

CLAIMANT

TYSON POULTRY, INC.,
EMPLOYER

RESPONDENT

TYNET CORPORATION,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED MAY 18, 2023

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

The claimant, pro se, did not appear for the hearing.

Respondents represented by Mr. J. Matthew Mauldin, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was conducted on May 17, 2023, in the present matter pursuant Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13 for the purpose of a determination of whether the above-captioned claim should be dismissed for want of prosecution.

Appropriate Notice of this hearing was tried on all parties to their last known address, in the manner specified by law.

No testimony was taken at the hearing.

The record consists of the transcript of the May 17, 2023, hearing and the documents held therein. The rest of the Commission's file has also been made a part of the record. It is hereby incorporated here by reference, without objection. The Respondents submitted evidence entailing one exhibit, consisting of three numbered pages. It has been marked as Respondents' Exhibit 1.

Background

The following procedural history applies to this claim:

Particularly, on September 26, 2022, the Claimant filed a Form AR-C with this Commission alleging that she sustained compensable injuries on March 10, 2022, while working for the respondent-employer. She alleged compensable injuries to her right hand and left elbow (tennis elbow) due to repetitive-motion type employment duties. The Claimant requested initial benefits in the form of medical expenses and loss wages.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on September 29, 2022, controverting the claim. The carrier wrote down on this form that they were controverting the claim because: “She [the Claimant] was not employed long enough to sustain a traumatic injury from rapid repetitive motion.”

Since the time of filing the Form AR-C, the Claimant has not requested a hearing or taken any action whatsoever to prosecute her claim for workers’ compensation benefits.

Subsequently, on or about March 29, 2023, the Respondents filed with the Commission a letter-request to dismiss this claim due to a lack of prosecution.

On that same date, the Commission sent a notice to the Claimant’s last known address listed in the Commission’s file to provide her with notice of the Respondents’ motion to have her claim dismissed. Per this correspondence, the Claimant was given a deadline of twenty days for filing a written response to the Respondents’ motion. Said notice was mailed to the Claimant by both certified and first-class mail via the United States Postal Service.

Information received by the Commission from the Postal Service shows that the above-referenced notice was delivered to the Claimant’s last known address listed in the file and left at

her home with an individual on April 3, 2023. However, the signature of the recipient to take delivery of the notice letter is indecipherable.

Yet, there was no response from the Claimant.

Therefore, per a hearing notice dated April 20, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim for want of prosecution. Said hearing was set for May 17, 2023, at 2:30 p.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas. The notice of hearing was sent to the parties in a comparable manner as described above.

A hearing was in fact conducted on the Respondents' motion to dismiss for want of prosecution. The Claimant did not appear at the hearing. To date, there has been no response whatsoever from the Claimant. However, the Respondents appeared through their attorney. Counsel noted that the Claimant has not requested a hearing since the filing of the Form AR-C on September 26, 2022, and she has not taken any action on her claim. Counsel argued that the Claimant did not appear at the hearing, and she has not responded to the notices of this Commission. Counsel further argued that the Claimant has not objected to the motion to dismiss. Based on the foregoing arguments, counsel asked that this claim be dismissed for a lack of prosecution, without prejudice, per Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

Discussion

The record before me shows that a request for a hearing has not been filed by or on behalf of the Claimant since the time of the claim in September 2022, which occurred more than six months ago. Of significance, the Claimant did not appear at the dismissal hearing, and she has not objected to her claim being dismissed or responded to the notices of this Commission.

Hence, the preponderance of the evidence shows that the Claimant has abandoned her claim for workers' compensation benefits, considering she has not objected to her claim being dismissed. More importantly, the Claimant has failed to make a bona fide request for a hearing since the filing of the claim more than six months ago.

Therefore, I find that the evidence before me proves that the Respondents' motion to dismiss this claim is called for under Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13. Said dismissal is without prejudice, to the refiling of it within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record, 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 authority of this claim.
2. The parties were given reasonable notice of the motion and dismissal hearing.
3. The evidence preponderates that the Claimant has failed to prosecute this claim under the provisions of Ark Code Ann. §11-9-702 and Commission Rule 099.13.
4. The Respondents' motion to dismiss is well founded.
5. This claim is hereby respectfully dismissed, without prejudice, under Ark. Code Ann. §11-9-702 and Rule 099.13, to the refiling of it within the period specified by law.

ORDER

Following the findings of fact and conclusions of law set forth above, this claim is hereby respectfully dismissed under the provisions of Ark. Code Ann. §11-9-702 and Arkansas Workers'

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Compensation 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