

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H006088

MARCOS SANDAVAL, EMPLOYEE	CLAIMANT
AVILA CONSTRUCTION, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
MARKEL SERVICE, INCORPORATED 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 represented by the Honorable Daniel Wren, Attorney at Law, Little Rock, Arkansas. Mr. Wren waived his participation in the hearing.

Respondents represented by the Honorable Jarrod S. Parrish, 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 the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (d) (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' Hearing Exhibit Index consisting of eleven numbered pages

and a cover sheet was marked as Respondents' Exhibit 1. The Respondents' Exhibit 2 included a copy of the Claimant's attorney Response to the Motion to Dismiss, which consisted of two pages. As well, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Procedural History

On August 19, 2022, the Claimant's attorney filed with the Commission a claim for workers' compensation benefits by way of a Form AR-C. Specifically, this document specified that the Claimant sustained an injury to his right eye on August 18, 2020. Per this document, the Claimant was nailing wood, and someone left a piece of metal on the floor, and he stepped on it, and it went straight into his eye. The Claimant's attorney asked for all available benefits under the Arkansas Workers' Compensation Act.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on September 1, 2020, accepting this as a compensable right eye injury. The carrier has paid both indemnity and medical benefits to and on behalf of the Claimant.

Since the filing of the Form AR-C, there has been no appreciable 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 9, 2023, the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to the Claimant's attorney.

The Commission sent a letter-notice to the Claimant and his attorney on May 11, 2023. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents' motion. The aforementioned notice was sent to the Claimant via first-class and certified mail.

Pursuant to a Hearing Notice as of 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. Said hearing was scheduled for July 19, 2023, at 12:30 p.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

On July 7, 2023, the Claimant's attorney filed a Response to Motion to Dismiss with the Commission. The Claimant's attorney also wrote a letter to the Commission that same day. Specifically, counsel for the Claimant stated: "The Claimant, Marco Sandaval, has filed his Response to the Respondents' Motion to Dismiss." Pursuant to Ark. Code Ann. §11-9-702 the Claimant does not object to the AR-C being dismissed, without prejudice, as the statute of limitations on this claim has not run."

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant's attorney waived his appearance at the hearing. The Respondents appeared through their attorney.

Counsel noted the Claimant has not requested a hearing on his claim for workers' compensation benefits since the Form AR-C was filed. Counsel specifically noted that the Claimant's attorney does not object to the claim being dismissed without prejudice. Therefore, counsel essentially moved that this claim be dismissed under the provisions of Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

The record before me proves that the Claimant has not requested a hearing since the filing of his claim for workers' compensation benefits. Hence, there are no identifiable issues to be adjudicated at this time. The Claimant's attorney does not object to the claim being dismissed without prejudice. Accordingly, after having taken into full consideration the entire record before me, I 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 a lack of prosecution, for which a hearing was held.
3. The evidence preponderates that the Claimant failed to timely prosecute his claim for workers' compensation benefits. Most significantly, the Claimant's attorney does not object to this claim being dismissed without prejudice.
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 specified by law.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
Administrative Law Judge

