

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: G804021

DANIEL SIMON-MARTINEZ (DEC'D), EMPLOYEE	CLAIMANT
CLANTON FARMS, LLC, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 29, 2022

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

The Claimant represented by Robert R. Cortinez II, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Jason M. Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on April 13, 2022, 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 claims should be dismissed for failure to prosecute 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 tried on the parties in the manner prescribed by law via the United States Postal Service.

The record consists of the transcript of the April 13, 2022, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

Procedural Background

In the present matter, the Claimant suffered a fatal heat stroke/heart attack, while working for the respondent-employer, Clanton Farms, LLC/the Respondents. The Claimant's surviving spouse, Ms. Patricia Hernandez Trejo (hereinafter referred as the "Claimant"), asserted her entitlement to benefits and retained legal counsel. As a result, on June 4, 2020, the Claimant's filed with the Commission a claim for workers' compensation benefits by way of a Form AR-C. Per this document, the alleged cause of injury and part of the body injured was described as follows: "Claimant died as a result of a heatstroke caused by unsafe working conditions while harvesting crops at employers' farm property." The attorney for the Claimant requested initial benefits in the form of temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, rehabilitation, attorney fees, medical expenses, and "other," however no further explanation was provided. Counsel also requested additional benefits, solely in the form of additional temporary total compensation. The Claimant's alleged fatal incident occurred on June 15, 2018.

The insurance-carrier's claims adjuster filed a Form AR-2 with the Commission, on June 27, 2018 controverting this claim in its entirety. The adjuster wrote, "This claim is denied because he died of a heart attack."

Subsequently, there was no action taken by the Claimant to prosecute this claim for workers' compensation benefits.

As a result, the Respondents filed a Motion to Dismiss with the Commission on December 22, 2020. Included in the Respondents' motion was a Certificate of Service to the Claimant's attorney.

On December 28, 2020, the Commission sent a letter to the Claimant's attorney notifying

him of the motion and a deadline of January 20, 2021 for him to file a written response to the motion.

Due to a redistribution of the territories by the Commission, this file was transferred from District 5 to District 6 on January 4, 2021.

Nevertheless, Claimant's attorney wrote a letter to the Commission on January 15, 2021 (said letter was filed with the Commission on January 19, 2021). At that time, counsel stated that he objected to the dismissal of the claim under the six-month-rule. Specifically, he wrote, in relevant part:

Due to the Claimant's surviving spouse living in Mexico, and her power of attorney living in New Mexico, I have been unable to establish contact in the last several weeks.

If the court requires a hearing setting we would ask that it be set out sufficiently far enough to allow my office to communicate with the out-of-state and out of country representatives.

On January 20, 2021, the Respondents' attorney sent an email to the Commission asking that his motion be held in abeyance, which was done.

A pre-hearing telephone conference was held on March 24, 2020 in this matter. However, at that time, the parties indicated that discovery had not been completed. Therefore, by agreement of the parties, the file was returned to the Commission's general files.

Since this time, there has been no action taken by the Claimant to prosecute her claim. As a result, the Respondents filed a Respondents' Second Motion to Dismiss with the Commission on February 7, 2022. Included in the Respondents' motion was a Certificate of Service to the Claimant's attorney by having served him with a copy of the pleading via fax/electronic means and/or by placing same in the United States Mail.

On February 9, 2022 the Commission sent a letter to the Claimant's attorney notifying him of the motion and a deadline of March 2, 2022 for filing a written response. The Claimant's

attorney wrote a letter to the Commission on March 1, 2022 stating that he had lost contact with the decedent's family and relatives in New Mexico, and Marco Martinez, who was acting on behalf of the Simon-Martinez family in Mexico as the go-between with his law firm. Counsel specifically stated: "As such, we do not object to a Rule 41 dismissal, without prejudice, as to the above styled workers' compensation claim."

Subsequently, a hearing was scheduled for April 13, 2022 on the Respondents' request for dismissal of this claim. Said hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant's attorney appeared at the hearing. Counsel for the Respondents also appeared at the hearing to address his motion for dismissal.

At the time of the hearing, counsel for the Respondents essentially noted that the Claimant has been given ample opportunity to pursue this claim, but he has failed to do so. As such, counsel basically moved that this claim be dismissed for want of prosecution.

The Claimant's attorney informed the Commission that he does not object to this claim being dismissed without prejudice since he has lost all contact with his client despite his best efforts to locate her.

Decision

There are two provisions for dismissal of this claim: Specifically, 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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

Commission Rule 099.13, provides:

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 evidence shows that the Claimant has had ample opportunity to pursue this claim for initial workers' compensation benefits, but she has failed to do so. It has been more than six (6) months after the filing of this claim for compensation, and no bona fide request for a hearing has been made with respect to this claim, at least since March 2020 (over more than two years ago). Hence, the record shows that the Claimant's whereabouts are unknown. Of particular importance, the Claimant has lost all contact with her attorney. As a result, the Claimant's attorney does not object to this claim being dismissed without prejudice.

After careful consideration of the evidence presented, and all mater properly before the Commission, I find that the second motion to dismiss filed by the Respondents should be granted. Therefore, pursuant to Ark. Code Ann.§11-9-702(a)(4) and Rule 099.13, this claim is hereby dismissed without prejudice to the refiling within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I 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 parties were provided reasonable notice of the motion to dismiss and hearing

thereon.

3. The Claimant has lost all contact with her attorney, and he has been unable to locate her. As a result, the Claimant's attorney does not object to this claim being dismissed, without prejudice.
4. The evidence preponderates that the Respondents' second motion to dismiss due to a want of prosecution is warranted.
5. That the Respondents' motion to dismiss is hereby granted under Ark. Code Ann. § 11-9-702(a)(4) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

ORDER

Based on the foregoing findings of fact and conclusions of law, I compelled to find that under the provisions of Ark. Code Ann. § 11-9-702(a)(4) and Rule 099.13, this claim should be and is hereby dismissed without prejudice, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge