

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H205025

CALLIE TIDWELL,
EMPLOYEE

CLAIMANT

LONOKE HIGH SCHOOL,
EMPLOYER

RESPONDENT

AR SCHOOL BOARDS ASSOC., WCT,
INSURNACE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 30, 2023

Hearing before Administrative Law Judge Chandra L. Black, on March 29, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas. Ms. York waived her 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 March 29, 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). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the March 29, 2023 and the documents contained therein. Specifically, said documentary evidence includes Respondents' Hearing Exhibit Index. Said exhibit encompasses eighteen (18) numbered pages and was marked as

Respondents' Exhibit 1. Moreover, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

Reasonable notice of the dismissal hearing was served on all the parties in the manner established by law.

No testimony was taken during the hearing.

BACKGROUND

The Claimant's attorney filed a Form AR-C with the Commission on July 25, 2022 in the above captioned. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. Her alleged work-related accident occurred on May 23, 2022. Counsel for the Claimant briefly described the cause of injury and the part of body injured: "Claimant was in the scope and course of employment and sustained injury to her right ear, neck, jaw, right shoulder, right elbow, right hip, both legs, both feet and other whole body."

On July 14, 2022 the respondent-insurance carrier filed a Form AR-2 with the Commission accepting the claim as a "medical only claim." Moreover, on July 26, 2022, the claims adjuster for the Respondents wrote a letter to the Commission regarding this claim. The adjuster stated that they had accepted this claim as compensable, and all reasonably necessary and authorized medical expenses and indemnity benefits have been paid.

Since the filing of the Form AR-C, the Claimant has failed to request a hearing before the Commission on the merits of her claim.

Therefore, on January 27, 2023, the Respondents filed a Motion to Dismiss for Failure to Prosecute, with a Certificate of Service to the Claimant's attorney.

On February 2, 2023, the Commission sent a notice to the Claimant’s attorney and the Claimant notifying them of the Respondents’ motion with a deadline of twenty (20) days for filing a written objection.

Per an email of February 2, 2023, the Claimant’s attorney wrote to the Commission, expressing her position regarding the motion. Specifically, she wrote in relevant part: “The Claimant does not object to the Motion to Dismiss without prejudice.”

On February 23, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for March 29, 2023 on the Respondents’ motion to dismiss for lack of prosecution.

DISCUSSION

Subsequently, a hearing was conducted before the Commission, on the Respondents’ motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that the within claim be dismissed without prejudice due to a lack of prosecution because the Claimant has failed to request a hearing since the filing of the Form AR-C and considering all appropriate benefits have been paid to and on behalf of the Claimant.

My review of the entire record establishes that more than six (6) months have passed after the filing of the Form AR-C for a claim of workers’ compensation benefits. However, since this time the Claimant has failed to make with the Commission a bona fide request for a hearing with respect to her claim. Moreover, the Claimant does not object to her claim being dismissed without prejudice. Considering the foregoing, I am persuaded that the Claimant has had ample time to pursue her claim for workers’ compensation benefits, but she has failed to do so. Thus, the Claimant has failed to timely prosecute her claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before this Commission, I find that the Respondents’ motion to dismiss this claim should be and is hereby granted under Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13. Accordingly, this claim for workers’ compensation benefits is respectfully dismissed without prejudice to the refiling within the specified limitation 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 filed a Form AR-C with the Commission on or about July 25, 2022.
3. More than six (6) months have passed since the Claimant filed the Form AR-C for a claim of workers’ compensation benefits. However, subsequent to the filing of said claim, there has been no request for a hearing made by the Claimant.
4. The Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute on January 7, 2023.
5. The Claimant does not object to her claim being dismissed without prejudice. That dismissal of this claim is warranted.
6. That the Respondents’ motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13, without prejudice to the refiling of the claim within the applicable limitation period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers’ compensation benefits. This claim is dismissed under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13, without

prejudice to the refiling of this claim within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge