

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H304138

BRYAN TAYLOR,
EMPLOYEE CLAIMANT

CENTRAL ARKANSAS AUTO PAINTING,
EMPLOYER RESPONDENT

EMPLOYERS PREFERRED INSURANCE,
THIRD PARTY ADMINISTRATOR/TPA RESPONDENT

OPINION FILED JUNE 28, 2024

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

Claimant, pro se, failed to appear at the hearing.

Respondents represented by the Honorable Erin Rambo, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 19, 2024, in the present matter 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 matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (a)(4), 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 June 19, 2024, hearing and the documents held therein. Commission's Exhibit No. 1 includes sixteen (16) pages consisting of the Form AR-C, pleadings, and various correspondence.

No testimony was taken.

Procedural History

On June 29, 2023, the Claimant filed a Form AR-C with the Commission alleging that he sustained a compensable injury during the course and in the scope of his employment with the respondent-employer on April 19, 2023. Specifically, per this document, the Claimant alleged that he sustained two hernias while performing his employment duties. According to the Claimant's account of how his injury occurred, he stated that he was told to lift a truck bed off a frame and move it. He maintained that the straining caused two hernias in his lower abdomen. The Claimant listed on the Form AR-C that he was requesting initial benefits in the form of temporary total disability compensation and medical expenses.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on July 27, 2023, wherein they controverted compensability of the claim. The Respondents stated, "No coverage. AM Trust Financial Service, Inc. is not the carrier of record for the insured and the date of loss."

Since the filing of the Form AR-C, there has been no affirmative action taken on the part of the Claimant to prosecute his claim, or otherwise pursue any type of benefits. In fact, the Claimant has not ever filed a request for a hearing in this matter.

Therefore, on or about May 1, 2024, the Respondents filed a Motion to Dismiss, with the Commission, along with a Certificate of Service to the Claimant. Per this documentation, the Respondents confirmed that they served a true and correct copy of the above and foregoing pleading, which was to be forwarded the Claimant by way of first-class mail on that same day, via regular mail with the United States Postal Service.

The Commission sent a letter to the Claimant on May 2, 2024, informing him of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. This notice was sent via first-class and certified mail with the Postal Service.

On May 6, 2024, the Postal Service informed the Commission that this item was delivered to the Claimant's home and left with an individual. The proof of delivery appears to bear the signature of a certain recipient of this parcel of mail as being a Joseph Patrick. However, the letter notice sent to the Claimant by first-class mail has not been returned to the Commission.

Yet, there was no response from the Claimant.

Pursuant to a Hearing Notice dated May 20, 2024, the Commission notified the parties that this matter had been set for a hearing on the Respondents' Motion to Dismiss. Said hearing was scheduled for June 19, 2024, at 12:00 p.m., at the Commission, in Little Rock, Arkansas. This notice of the dismissal proceedings was sent via first-class and certified mail with the United States Postal Service.

The tracking information received from the Postal Service shows that they delivered the notice of the dismissal proceedings to the Claimant's residence on May 23, 2024. Information received from the Post Office by the Commission shows that an individual at the Claimant's home signed for the Hearing Notice and took delivery of this parcel of mail. The signature of the recipient for delivery shows that the notice of the dismissal proceedings was left with an individual by the name of Joseph Patrick. The notice of the dismissal hearing sent to the Claimant by first-class mail has not been returned to the Commission. Therefore, the evidence before me preponderates that the Claimant received notice of the dismissal hearing.

Still, there was no response from the Claimant.

Nevertheless, a dismissal hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear at the hearing. However, the Respondents appeared through their attorney. The Respondents' attorney asserted that the Claimant has failed to prosecute his claim for workers' compensation benefits and that it should be dismissed for want of prosecution. Counsel further noted that the Claimant has not asked for a hearing since the filing of the Form AR-C, which was done more than six (6) months ago. Therefore, the Respondents' attorney essentially moved that this claim be dismissed based on the time timing of the events described above and the history of the claim involving a lack of prosecution under Ark. Code Ann. §11-9-702, and Commission Rule 099.13.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in this motion for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

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.

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 evidence shows that the Claimant has had ample time to pursue his claim workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not ever requested a hearing or otherwise attempted to prosecute his claim for benefits since the filing of the Form AR-C, which was done more than six (6) months ago. Most notably, the Claimant has not responded to the Notices of this Commission, nor has he contested the dismissal request or objected to his claim being dismissed.

Therefore, after consideration of the evidence before me, I find the Respondents' Motion to Dismiss to be well taken. Accordingly, pursuant to Ark. Code Ann. §11-9-702 (a)(4), and Commission Rule 099.13, this claim for workers' compensation benefits is hereby dismissed *without prejudice* to the refiling of it within the limitation period specified by the applicable 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.

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 want of prosecution for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of the Form AR-C, which was done more than six (6) months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits based upon the relevant provisions of the specified statute, Ark. Code Ann. §11-9-702 (a)(4), and Rule 099.13 of this Commission.

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 for dismissal of this claim for want of prosecution is hereby granted, *without prejudice*, under the provisions of Ark. Code Ann. §11-9-702 (a)(4), and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for more workers' compensation benefits. This dismissal is hereby ordered pursuant to Ark. Code Ann. §11-9-702 (a)(4), and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge