

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H306360

DAVID R. BEARD, EMPLOYEE	CLAIMANT
LEVI TOWERS, INC., EMPLOYER	RESPONDENT
WESCO INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
AM TRUST NORTH AMERICA, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 6, 2024

A hearing was held before Administrative Law Judge Chandra L. Black, in Garland County, Hot Spring, Arkansas.

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable William C. Frye, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 26, 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(d), 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 26, 2024, hearing and the documents held therein. Explicitly, Commission's Exhibit 1 includes six (5) total pages of correspondence and the return receipts for the certified mail sent via the United States Postal Service; and Commission's

Exhibit 2 is the form Workers' Compensation – First Report of Injury or Illness, which has been blue-backed and made a part of the record for the July 26, 2024, hearing transcript. Additionally, Respondents' Exhibit 1 consists of three (3) pages of various documents relating to this claim.

No testimony was taken.

BACKGROUND

On September 28, 2023, the Claimant's former attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant via a Form AR-C. Per this document, the Claimant alleged that he sustained injuries to his back, left elbow, right elbow, and other whole body during the course and in the scope of his employment with the respondent-employer, on September 5, 2023.

Subsequently the Respondents filed a First Report of Injury or illness with the Commission on October 5, 2023, accepting the claim as a compensable injury to the Claimant's back lower/lumbar/sacral spine.

Since the filing of the Form AR-C on September 28, 2023, a year ago, there has been no action on the part of the Claimant to prosecute this claim by way of a bona fide request for a hearing.

On February 13, 2024, the Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant in this matter. There being no objection to the motion for the Claimant's attorney to withdraw as counsel of record, the Full Commission entered an Order on March 5, 2024, granting the motion.

Still, there was no action on the part of the Claimant to prosecute this claim by way of a bona fide request for a hearing or in any other manner.

Therefore, on or about April 1, 2024, the Respondents filed a letter Motion to Dismiss, with the Commission. The Respondents mailed a copy of this pleading to the Claimant by way of the United States Postal Service.

The Commission sent a letter to the Claimant on April 2, 2024, informing him of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter was mailed to the Claimant by both first-class and certified mail. Tracking information received by the Commission from the Postal Service shows that they were able to deliver this parcel of mail to the Claimant on April 6, 2024. The letter sent by first-class mail has not been returned to the Commission.

As of late, there has not been any type of answer back from the Claimant.

On April 24, 2024, the Commission notified the parties per a Notice of Hearing that the matter had been set for a hearing address the Respondents' motion to dismiss. Said hearing was scheduled for July 26, 2024, in Hot Springs, Arkansas.

Said letter was sent to the Claimant via first-class and certified mail. The Commission received information from the Postal Service's tracking system which shows that they delivered the notice of hearing to the Claimant's home on April 26, 2024. The letter sent via first-class mail has not been returned to the Commission. Based on the foregoing, the evidence preponderates that the Claimant received appropriate notice of the dismissal hearing.

Nevertheless, the dismissal hearing was held as scheduled. The Claimant failed to appear at the hearing. Counsel for the Respondents appeared on their behalf. He argued that the Claimant has failed to prosecute his claim for workers' compensation benefits. He further noted that the Claimant has not taken any affirmative action to prosecute his claim in over six (6) months. More specifically, counsel noted that the Claimant has not taken any action to advance the prosecution

of his claim since the filing of the Form AR-C, which was done a year ago. Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13, with or without prejudice.

ADJUDICATION

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

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

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) 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)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for additional workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits since the filing of the Form AR-C, over almost a year ago; and nor has he resisted the motion for dismissal or even responded to the notices of this Commission

despite having received delivery of them by the Postal Service. Moreover, considering that the Claimant did not respond to the notices of this Commission and did not appear at the dismissal proceedings, I am convinced that the Claimant has abandoned claim.

Hence, the evidence preponderates that the Claimant has failed to prosecute this claim for additional workers' compensation benefits. Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, this claim for additional workers' compensation benefits should be dismissed, *without prejudice*, to the refiling of it within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

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 for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since his former attorney filed the Form AR-C, which was done more than a year 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(d), and Rule 099.13 of this Commission.
4. Appropriate notification 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 this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702 (d), 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 additional workers' compensation benefits. This dismissal is pursuant to Ark. Code Ann. §11-9-702(d), 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