

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H201226

STANLEY J. BECK, EMPLOYEE	CLAIMANT
CRANFORD CONSTRUCTION COMPANY, EMPLOYER	RESPONDENT
ACIG INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JUNE 18, 2024

A hearing was held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

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

Respondents were represented by the Honorable William "Shane" M. Bridgeforth, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 10, 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.

No testimony was taken.

The record consists of the transcript of the April 10, 2024, hearing and the documents held therein. Specifically included in the record is Commission's Exhibit No. 1 consisting of six (6)

pages. Additionally, in order to adequately address this matter under Ark. Code Ann. § 119-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”), and without objection, I have blue-backed to the record, four totaled pages which includes the Form AR-C, pleadings, and correspondence. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

DISCUSSION

On October 13, 2022, 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 February 24, 2021. Specifically, per this document, the Claimant alleged he stepped in a hole and injuries his right knee while performing employment duties on a job site. The Claimant stated on the Form AR-C that tall grass obstructed his view of the hole. However, the Claimant requested only additional medical expenses, additional permanent partial disability, and that he be evaluated by another a doctor.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on February 9, 2022, wherein they accepted compensability of the claim. The Respondents accepted this claim for a compensable “right knee injury.” It appears that the Respondents paid benefits to and on behalf of the Claimant for his admittedly compensable right knee injury of February 2021.

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

Therefore, on or about February 27, 2024, the Respondents filed a Respondents’ 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 foregoing pleading upon the Claimant by via first-class mail on that same day.

The Commission sent a Notice to the Claimant on February 28, 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 via the United States Postal Service.

However, the United States Postal Service informed the Commission on March 23, 2024, that this item was delivered to the Claimant's and left with an individual. The proof of delivery appears to bear the Claimant's signature. Also, the letter notice sent to the Claimant by first-class mail has not been returned to the Commission.

Nevertheless, there was no response from the Claimant.

Pursuant to a Hearing Notice dated March 12, 2024, the Commission notified the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss. Said hearing was scheduled for April 10, 2024, at 10:30 a.m., at the Commission, in Little Rock, Arkansas. This notice was sent via first class and certified mail via the United States Postal Service.

The information received from the Postal Service shows that they were unable to locate any delivery information on this item per their tracking system. However, the letter notice sent to the Claimant by first-class mail has not been returned to the Commission.

Still, there was no response from the Claimant.

A 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. He 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. According to the Respondents' attorney's motion, he submitted that this claim be dismissed based on the time timing of the events described above and the history of the claim.

Adjudication

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

Specifically, Arkansas Code Annotated §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 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.

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 (d), and Commission Rule 099.13, this claim for additional workers' compensation benefits is hereby dismissed *without prejudice* to the refiling of it within the limitation period specified within 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, 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*, per Ark. Code Ann. §11-9-702, 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(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