

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H405519

JUDY B. BROWLEY,
EMPLOYEE

CLAIMANT

JEFFERSON COUNTY,
EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT SERVICES,
CARRIER/TPA

RESPONDENT

OPINION FILED MAY 19, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in Pine Bluff, Jefferson County, Arkansas.

The Claimant, pro se, did not participate in the hearing.¹

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to a motion to dismiss filed by the Respondents. On May 8, 2025, a hearing was conducted on the Respondents' motion to dismiss in Pine Bluff, Arkansas. Hence, presently the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the statutory provisions of Ark. Code Ann. §11-9-702 (a) (4) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript and documentary evidence from May 8, 2025. In that regard, Commission's Exhibit 1 includes two (2) actual pages, which was marked

¹ Although the Claimant appeared before we went on the record for the hearing, but she declined to stay for the hearing. Basically, the Claimant indicated that she has returned to work for the employer in this matter and does not wish to pursue her claim.

accordingly, and Respondents' Exhibit 1 consisting of ten (10) numbered pages was also thus marked accordingly.

Reasonable notice of the dismissal hearing was had on all the parties in that manner set by applicable law.

No testimony was taken at the dismissal hearing.

Background

The record reflects the following procedural history:

The Claimant filed a Form AR-C, with the Commission on August 26, 2024, alleging that she sustained an accidental injury, on May 8, 2023, while working for the respondent-employer. However, the date of injury listed in the Commission's file on May 5. This is the exact same date of injury listed by the respondent-employer on the Form AR-2. Nevertheless, per the Form AR-C, the Claimant allegedly sustained an injury in the course and scope of her employment, while loading boxes onto a dolly, when she accidentally incurred a fall. The Claimant alleged that she sustained injuries to her left hand, which included her middle and ring fingers. Consequently, the Claimant requested only initial benefits, in the form of medical expenses.

On August 28, 2024, the Respondents filed a Form AR-2 with the Commission accepting this as a "medical only claim." Specifically, the claims adjuster wrote, "Medical Only, AR-C filed."

Since the filing of the Form AR-C, the Claimant has failed to prosecute or otherwise pursue her claim for initial workers' compensation benefits. Specifically, more than six (6) months passed after the filing of her claim for initial compensation. However, the Claimant has made no bona fide request for a hearing with respect to her claim.

As a result, on March 3, 2025, the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a certificate of service to the Claimant. Per this proof of service, the Respondents served a copy of the foregoing pleading on the Claimant by depositing a copy of it in the United States Mail to same address listed with the Commission.

Subsequently, on March 6, 2025, the Commission wrote a letter notifying the Claimant of the Respondents' motion to dismiss her claim and asked that she file a written response to the motion within twenty (20) days. Said letter was sent to the Claimant by both first-class mail and certified mail to the address listed by the Claimant with the Commission. Said letter was sent via the United States Postal Service.

Per tracking information received from the Postal Service, the letter notice sent by certified mail to the Claimant was delivered to her when she picked it up at a Postal Facility on March 21, 2025. The signature of the recipient for delivery of said letter bears the Claimant's signature. Regarding the letter sent by first-class mail, it has not been returned to the Commission.

The Commission sent a Notice of Hearing to the parties on March 27, 2025, scheduling the dismissal hearing for May 8, 2025. Said hearing notice was sent to the Claimant by both first-class and certified mail to the same address as before.

Per tracking information received from by the Commission from the United States Postal Service, the hearing notice sent via certified mail was delivered to the Claimant on April 2, 2025. Again, the Claimant took delivery of the Hearing Notice when she picked it up from the Altheimer Postal Facility. The signature of the recipient shows that the Claimant signed for the notice of hearing. However, the notice sent by first-class mail has not been returned to the Commission.

Thus, the evidence preponderates that reasonable notice of the dismissal hearing was made upon the Claimant.

Still, there was no response from the Claimant.

Therefore, the dismissal hearing was conducted on the Respondents' motion to dismiss this claim as formerly scheduled. Despite having received notice of the dismissal hearing, there was no response from the Claimant. However, the Claimant appeared at the hearing venue prior to the start of the dismissal hearing, but she waived her appearance and participation in the hearing upon learning the nature of the hearing. Nevertheless, the Respondents appeared at the hearing through their lawyer. The Respondents' attorney argued, among other things, for dismissal of this claim because the Claimant has made no bona fide request for a hearing or taken any action to prosecute or otherwise resolve her claim since the filing of the Form AR-C in August 2024. Hence, counsel further argued that more than six (6) months have passed since the Claimant filed the Form AR-C with the Commission, without making any type of bona fide request for a hearing. Specifically, the attorney for Respondents moved to dismiss this claim under the authority of Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13, *without prejudice*.

Adjudication

The statutory provision and Arkansas Workers' Compensation Rule applicable to the Respondents' motion for dismissal of this claim for initial workers' compensation benefits 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 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)

Since the filing of the Form AR-C, in August 2024, the Claimant has made no bona fide request for a hearing with respect to her claim. Hence, the evidence demonstrates that more than six (6) months have passed since the filing of the Claimant's claim for initial workers' compensation benefits. Hence, the Claimant has failed to timely prosecute her claim. Moreover, the Claimant has indicated that she does not object to her claim being dismissed.

Considering all the foregoing, I am compelled to conclude that the Claimant has abandoned her claim for workers' compensation benefits. Based on all the aforementioned reasons, I find that the Respondents' motion to dismiss this claim is warranted. Therefore, pursuant to Ark. Code Ann. §11-9-702 (a) (4) (Repl. 2012) and Commission Rule 099.13, this claim for initial benefits is hereby respectfully dismissed for want of prosecution. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record before me, 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. On August 26, 2024, the Claimant filed a Form AR-C with the Commission in this matter asserting her entitlement to initial workers' compensation benefits due to an accidental injury to her left hand/fingers occurring in May 2023.
3. More than six (6) months have passed since the filing of the Form AR-C, and she has made no bona fide request for a hearing with respect to her claim.
4. The Respondents filed a motion to dismiss with the Commission asking that the within claim be dismissed due to a lack of prosecution.
5. Reasonable notice of the motion to dismiss and hearing was had on all the parties.
6. The evidence preponderates that the Respondents' motion to dismiss this claim for want of prosecution is warranted.
7. That the Respondents' motion to dismiss is granted pursuant to Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) and Commission Rule 099.13, *without prejudice*, to the refiling of the claim within the limitation periods specified by law.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann §11-9-702 and Commission Rule 099.13 to the refiling of it within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge