

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807164

KIMBERLY CLARDY,
EMPLOYEE

CLAIMANT

UNIVERSITY OF ARKANSAS FAYETTEVILLE,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JULY 30, 2024

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Vacated & Remanded.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed February 29, 2024. The administrative law judge found that the claim should be dismissed without prejudice. After reviewing the entire record *de novo*, the Full Commission vacates the administrative law judge's opinion, and we remand for further proceedings.

I. HISTORY

The parties stipulated that the employee-employer-carrier relationship existed on October 3, 2018. The parties stipulated that the claimant "was working as a temporary employee for the University of

Arkansas on October 3, 2018” and that the claimant “alleges an accidental injury to her right shoulder on October 3, 2018.”

The parties stipulated that the claimant “called [the] Company Nurse on October 8, 2018 to report an on-the-job injury.” The parties stipulated that the claimant “received medical treatment at Pat Walker Health Center on October 9, 2018, and the bill related to that treatment was paid by Respondents on November 4, 2018.” The parties stipulated that “no additional medical or indemnity benefits were paid relative to this claim after November 4, 2018.”

The parties stipulated that the claimant “filed an AR-C with the Commission for initial and additional benefits on April 5, 2019.” The parties stipulated that the respondents “filed a Motion to Dismiss (MTD) for failure to prosecute on October 30, 2023.” The parties stipulated that the claimant “filed her Response in Opposition to the MTD on November 27, 2023, and expressed her wish to move forward with a hearing on her claim.”

A pre-hearing order was filed on January 18, 2024. The claimant contended, “The claimant contends that she sustained a compensable injury to her right shoulder on 10/3/18. In addition, the claimant contends that she is entitled to additional reasonable and necessary medical treatment in connection with her compensable right shoulder injury. Next, the claimant contends that the employer, without reasonable cause, refused

to return the claimant to work where suitable employment was available. Finally, the claimant contends that she is entitled to controverted attorney fees for indemnity benefits awarded and any and all future indemnity benefits arising from the right shoulder injury. The claimant hereby reserves her rights to any and all additional benefits.”

The respondents contended, “The claimant reported an injury to her neck on October 3, 2018 while lifting a crate of mail. The claimant was treated at Pat Walker Health Center on October 9, 2018 and was diagnosed with a soft tissue neck strain. The claimant received no other medical treatment related to her alleged injury. The bill related to the medical treatment was paid by Respondents on November 4, 2018. There was no additional activity or requests for a hearing after that date.”

The respondents contended, “In April, 2019, the claimant filed a Form C. No hearing was requested. There was no additional activity on this claim. On October 30, 2023, the Respondents filed a Motion to Dismiss on October 30, 2023. The claimant has now requested a hearing in response to the Respondents Motion to Dismiss.”

The respondents contended, “Respondents contend that the claimant has received all benefits and medical treatment to which she might have been entitled as a result of her soft tissue neck strain injury. After the report of injury the claimant attended one medical appointment, the bill was

paid by Respondents in November, 2018, and no other action was taken by claimant other than filing a Form C in April, 2019. The claimant has not pursued any additional benefits and the claim was dormant until Respondents filed the Motion to Dismiss in October, 2023. The Respondents would contend that the limitations of Ark. Code Ann. {11-9-702 apply to this claim. The claimant's claim for additional benefits is time barred pursuant to Ark. Code Ann. {11-9-702(b)(1), and the claim should be dismissed pursuant to Ark. Code Ann. {11-9-702(a)(4). The Respondents reserve the right to modify these contentions [as] necessary pending further discovery."

The parties agreed to litigate the following issue: "1. Whether this claim is barred by the statute of limitations. All other issues are reserved by the parties."

An administrative law judge filed an opinion on February 29, 2024. The administrative law judge found, among other things, that the claim should be dismissed without prejudice. The claimant appeals to the Full Commission.

II. ADJUDICATION

Commission Rule 099.13 provides, in pertinent part:

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 the parties, enter an order dismissing the claim for want of prosecution.

The purpose of Commission Rule 099.13 is to permit the claimant to resist dismissal of the claim and to show, if she can, why the application for dismissal is without merit. *Dura Craft Boats, Inc. v. Daugherty*, 247 Ark. 125, 444 S.W.2d 562 (Ark. 1969).

In the present matter, the claimant alleged that she had sustained a work-related injury to her right shoulder on October 3, 2018. Although they have not stipulated that the claimant sustained a compensable injury, the respondents paid for a medical visit received by the claimant on October 9, 2018. The claimant filed a claim for initial and additional benefits on April 5, 2019. On October 30, 2023, the respondents filed a Motion to Dismiss, asserting that the claimant had failed to prosecute her claim. The claimant filed a timely response on November 27, 2023 and “expressed her wish to move forward with a hearing on her claim.”

Rule 099.13 is designed to permit the Workers’ Compensation Commission to see that the rights of the claimant are not prejudiced. *Daugherty, supra*. In the present matter, in order to ensure that the rights of the claimant are not prejudiced, the Full Commission vacates the administrative law judge’s dismissal of the claim. We remand the case to the administrative law judge for further proceedings. The Full Commission directs the administrative law judge to adjudicate all pertinent issues,

including whether the claimant proved she sustained a compensable injury, whether the claimant proved she was entitled to additional benefits, and whether the statute of limitations bars the claim. The Full Commission strongly advises the claimant to introduce evidence in accordance with Ark. Code Ann. §11-9-705(c)(Supp. 2023).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner