

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H403028

LEANNA FLETCHER,
EMPLOYEE

CLAIMANT

QUAPAW CARE & REHAB CENTER, LLC,
EMPLOYER

RESPONDENT

INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA/SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 31, 2025

Hearing held before Administrative Law Judge CHANDRA L. BLACK, in Hot Springs, Garland County, Arkansas.

Claimant, Pro Se, did not appear at the hearing.

Respondents represented by the Honorable Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 28, 2025, in the present case to determine whether this claim for initial Arkansas workers' compensation should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13. The dismissal hearing in this claim of initial benefits was held pursuant to the ruling in Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004).

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 March 28, 2025, hearing transcript and the documents held therein. Commission's Exhibit consists of eighteen (18) pages of pleadings, letters, forms, and other tracking documents which were provided to the Commission by the United States Postal Service concerning delivery information for notices sent to the Claimant; and Respondents' Exhibit 1 consists of two (2) pages.

Procedural History

On May 7, 2024, the Claimant's attorney filed with the Commission a claim for Arkansas workers' compensation benefits via a Form AR-C. Per this document, the Claimant alleged that she sustained injuries during the course and in the scope of her employment with the respondent-employer. According to this document, the Claimant asserted that she sustained injuries to her hip, and ankle in a work-related accident on April 28, 2024. The Claimant's attorney requested only initial benefits. In fact, her attorney checked all the boxes for every possible initial workers' compensation benefit allowed under the law.

On June 7, 2024, the respondent-insurance-carrier filed with the Commission a Form AR-2 stating their position on this claim for workers' compensation benefits. Per this form, the Respondents denied the claim in its entirety. Specifically, the carrier stated that the Claimant's injury did not arise out of nor in the course of the Claimant's employment.

Also on June 7, the Claimant's counsel sent an email to the Commission asking that the claim be assigned to a judge for a hearing. As a result, the claim was assigned to my office for adjudication and the hearing process was started. On August 21, 2024, I entered a prehearing order in the case, which outlined the stipulations, issues, and contentions of the parties. Per said order the case was scheduled for a hearing in Hot Springs, Arkansas on November 22, 2024.

However, on September 19, 2024, the Claimant's attorney sent an email to the Commission stating: "Claimant hereby withdraws her hearing request. Please return this claim to general files." I canceled the hearing and returned the claim to the Commission's general files on that same day.

Additionally, on September 19, the Claimant's attorney filed a motion/request to withdraw as counsel of record for the Claimant in this matter. On October 18, 2024, the Full Commission entered an order granting the motion for the Claimant's attorney to withdraw from representing her in this matter.

Since this time, the Claimant has not tried to pursue or otherwise resolve her claim, nor has she made a bona fide request for a hearing June 7, 2024.

Therefore, on January 14, 2025, the Respondents filed a Motion to Dismiss, with the Commission, along with a certificate of service confirming that they had emailed a copy of the motion to the Claimant.

On January 21, 2025, my office sent a letter/notice to the Claimant informing her of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter was mailed to the Claimant via both first-class and certified mail. Per tracking information received from the United States Postal Service, on February 5, they were unable to find any delivery information in their records on this item. Subsequently, this item was returned to the Commission marked "unclaimed." However, the letter sent via first-class mail has not been returned to the Commission.

There was no response whatsoever from the Claimant.

Therefore, per a Hearing Notice sent to the parties on February 11, 2025, the Commission notified them that this matter had been set for a hearing on Respondents' motion for dismissal of

this claim due to a lack of prosecution. Said dismissal hearing was scheduled for Friday, March 28, 2025, in Hot Springs, at the Transportation Depot.

Said notice was mailed to the Claimant by both first-class and certified mail. Per information received from the Postal Service on February 27, 2025, they were unable to find any delivery information in their records for this item. Subsequently, this item was returned to the Commission marked “unclaimed.” However, the letter sent via first-class mail has not been returned to the Commission. Under these circumstances, I find that the Claimant received proper notice of the hearing.

Thus far, there has been no response whatsoever from the Claimant.

Nevertheless, the hearing was held as scheduled. The Claimant did not appear at the hearing. However, the Respondents’ counsel appeared at the hearing and argued that the Claimant has failed to prosecute her claim for workers’ compensation benefits. More specifically, the Respondents’ attorney noted that the Claimant has not taken any action to advance her claim since the filing of the request for a hearing by her former attorney, which was done more than six (6) months ago, and ultimately ended with the request for a hearing being withdrawn. Therefore, the Respondents’ attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13 *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(a)(4):

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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, 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 thorough review of the evidence before me shows that the Claimant has had ample time to pursue her claim for initial benefits, but she has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute her claim for workers' compensation benefits since her former counsel filed a request for hearing, which was done over more than six (6) months ago. Of significance, the Claimant has failed to oppose the motion, and she has not responded to the notices of this Commission.

Here, the evidence preponderates that the Claimant has failed to timely prosecute this claim for workers' compensation benefits. Under these circumstances, I am convinced that the Claimant has abandoned her claim for workers' compensation benefits. Accordingly, based on the preponderance of the evidence presented 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 the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13, this claim for initial workers' compensation benefits is hereby respectfully dismissed, *without prejudice*, to the refiling within the limitation period specified under the law.

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 (Repl. 2012):

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. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
4. The Respondents' Motion to Dismiss this claim for want of prosecution is hereby granted, *without prejudice*, pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of the claim within the specified limitation period.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for initial Arkansas workers' compensation benefits. This dismissal is pursuant to Ark. Code Ann. §11-9-702, 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