

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H004697

LAWRENCE S. GEORGE,
EMPLOYEE

CLAIMANT

WINDSOR DOOR, LLC,
EMPLOYER

RESPONDENT

STANDARD FIRE INSURANCE, CO./TRAVELERS
INDEMNITY COMPANY, INSURANCE CARRIER/
THIRD PARTY ADMINISTRATOR (TPA)

RESPONDENT

OPINION FILED JANUARY 2, 2025

Hearing held before Administrative Law Judge Chandra L. Black, Little Rock, Pulaski County, Arkansas.

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

Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 19, 2024, in the present case to determine whether this Arkansas workers' compensation claim should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702, and/or Arkansas Workers' Compensation Commission Rule 099.13. This hearing 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 December 19, 2024, hearing transcript and the documents held therein. Commission's Exhibit consists of two (2) pages, 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 nineteen (19) numbered pages of pleadings, correspondence, and various other forms related to this claim.

Procedural History

On May 27, 2020, 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 he sustained injuries during the course and in the scope of his employment with the respondent-employer, on May 3, 2022, while working on a machine that pushes metal out. According to this document, the Claimant injured his right arm, right shoulder and other whole body. The Claimant's attorney requested both initial and additional benefits. In fact, his attorney checked off all the boxes for every conceivable workers' compensation benefit under the law.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on July 20, 2022. Per this form, the Respondents accepted this claim as a compensable claim and began making payments for workers' compensation benefits to and on behalf of the Claimant.

Subsequently although pleadings were filed and various other discovery was started in this matter, there was no bona request for a hearing ever made. It appears that ultimately, the Respondents paid a 6% impairment rating, and the Claimant returned to work for the Respondents. As a result, the remaining issue of wage-loss disability was made moot.

Therefore, the Claimant's attorney filed a request/motion to withdraw as counsel of record for the Claimant in this claim. On March 5, 2024, the Full Commission entered an order granting the motion for the Claimant's attorney to withdraw from representing him in this matter.

Since this time, the Claimant has not tried to pursue or otherwise resolve his claim, nor has he made a bona fide request for a hearing since the filing of the Form AR-C.

Therefore, on September 30, 2024, the Respondents filed a *Motion to Dismiss for Failure to Prosecute*, with the Commission, along with service of a copy of the motion to the Claimant. Hence, the Respondents mailed a copy of said motion to the Claimant via the United States Postal Service.

The Commission sent a letter to the Claimant on October 15, 2024, informing the Claimant 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. Per information received from the United States Postal Service, on October 18 this item was delivered to the Claimant's last known address listed with the Commission. The signature of the recipient taking delivery of this item is indecipherable. However, the letter sent via first-class mail has not been returned to the Commission.

There was no response whatsoever from the Claimant.

Therefore, pursuant to a Hearing Notice sent to the parties on November 8, 2024, the Commission notified them that this matter had been set for a hearing on Respondents' motion to dismiss this claim. Said hearing was scheduled for December 19, 2024, at the Arkansas Workers' Compensation Commission in Little Rock, Arkansas.

Said notice was mailed to the Claimant by both first-class and certified mail. Per information received from the Postal Service on November 23 they were unable to locate any delivery information in their records for this item. However, the letter sent by first-class mail has not been returned to the Commission. Under these circumstances, I find that the Claimant received proper notice of the hearing.

Still, there was no response 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 his claim for workers' compensation benefits. More specifically, the Respondents' attorney noted that the Claimant has not taken any action to advance his claim since the filing of the Form AR-C, which was done more than six (6) months ago. He further noted that the Claimant has not taken any affirmative action to resist his claim being dismissed. 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.

Furthermore, 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 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, which was done over more than six (6) months ago. More importantly, nor has the Claimant resisted the motion for dismissal of his workers' compensation claim.

Here, the evidence preponderates that the Claimant has failed to prosecute this claim for workers' compensation benefits. Under these circumstances, I am convinced that the Claimant has abandoned this claim. Accordingly, 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 the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refiling 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. 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 a lack 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, I have no alternative but to dismiss this claim for Arkansas workers' compensation benefits. This dismissal is per 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