

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.:H305647

DYLAN GRAY, EMPLOYEE	CLAIMANT
PREDDY CONSTRUCTION, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
MARKEL SERVICE, INC., THIRD PARTY ADMINSTRATOR	RESPONDENT

OPINION FILED JULY 16, 2024

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

The Claimant, *pro se*, failed to appear at the hearing.

Respondents represented by the Honorable Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss due to a lack of prosecution, on April 24, 2024, in this workers' compensation claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to promptly prosecute it under the provisions of Ark. Code Ann. §11-9-702 (a) (4) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the April 24, 2024, hearing and the documents held therein. Also made a part of the record were Commission’s Exhibit 1 consisting of thirty-seven (37) pages; and the Respondents’ Hearing Exhibit consisting of one (1) page was marked as Respondents’ Exhibit 1. Both exhibits were made a part of the record without objection.

No testimony was taken at the hearing.

Procedural History

The Claimant has alleged that he sustained an injury at work on August 4, 2023, for which he has asserted his entitlement to medical treatment and indemnity benefits. On October 1, 2023, the Claimant filed a letter-claim requesting a hearing on his workers’ compensation case. The Respondents have controverted this claim in its entirety and no benefits have been paid. Therefore, this is a claim for initial benefits. The Claimant’s letter meets the requirement for filing a claim for initial benefits. Specifically, the Claimant wrote in his letter to the Commission that his claim was due to heat exhaustion and his boss would not allow him to go home when he knew he had a fever. Explicitly, the Claimant wrote: “... It was explained to me that my claim was for Covid only and that is not correct, I found out I had Covid while leaving the hospital.”

The Respondents filed a Form AR-2 with the Commission on August 31, 2023, controverting the claim. Their grounds for denial of the claim were stated as: “Denied as work was not the contributing factor in Claimant contracting COVID.”

Subsequently, on November 13, 2023, the Legal Advisors’ Division returned the claim to the Office of the Clerk of the Commission asking that it be assigned to an Administrative Law Judge for a hearing after their attempt to set up a mediation conference failed. As a result, the claim was assigned to this office for adjudication.

Upon receipt of this claim, the prehearing process was started. Specifically, on November 29, 2023, I mailed Prehearing Questionnaires and Preliminary Notices to the parties. The Claimant did not make a responsive filing. Therefore, on February 5, 2024, I returned the case to the Clerk of the Commission asking that it be returned to the Commission's general files, which was done.

Since this time, the Claimant has failed to make a request for a hearing and has not taken any affirmative action to pursue his claim for workers' compensation benefits.

Therefore, the Respondents filed a Motion to Dismiss for Failure to Prosecute with the Commission on March 4, 2024, along with a certificate of service showing that a copy of this pleading was sent via email and U.S Mail.

On March 5, 2024, the Commission sent a letter to the Claimant letting him know about the motion for dismissal of his workers' compensation claim, along with a deadline of twenty (20) days for filing a written objection/response.

Said letter notice was sent to the Claimant by way of first-class and certified mail via the Postal Service. The letter sent to Claimant via certified mail was returned to the Commission marked "Return to Sender – vacant – Unable to Forward." However, the letter sent via first-class mail has not been returned to the Commission.

Yet, there has been no response from the Claimant.

In a Notice of Hearing dated March 27, 2024, setting this case for a dismissal hearing on April 24, 2024, at the Commission in Little Rock, Arkansas.

Said hearing notice was sent to the Claimant via first-class and certified mail via the Postal Service. The letter sent to Claimant via certified mail was returned to the Commission marked "Return to Sender – vacant – Unable to Forward." However, the letter sent via first-class mail has not been returned to the Commission. Therefore, I find that the Claimant had notice of the hearing.

Still, there has been no response from the Claimant.

Nevertheless, a hearing was conducted before the Commission, on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that this claim be dismissed due to a lack of prosecution under Ark. Code Ann. §11-9-702 and Rule 099.13, without prejudice. Counsel specifically noted that the Claimant has asserted a claim for a heat-related, and possibly a COVID injury, but there has been no bona fide effort by the Claimant to pursue his claim. The Respondents' attorney also moved that the within claim be dismissed for a lack of prosecution because it has been more than six (6) months since the assertion of a claim by the Claimant without any action being taken by the Claimant to pursue his claim. Moreover, the Claimant did not appear at the hearing to object to his claim for workers' compensation benefits being dismissed.

Adjudication

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

Mainly, 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 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 a 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)

Review of the records shows that more than six (6) months have passed after the filing of this claim. However, since that time, the Claimant has failed to make a bona fide request for a hearing with respect to his claim for workers' compensation benefits. Hence, no probative action whatsoever has been put forth by the Claimant to resolve or pursue his claim.

Under these circumstances, I am persuaded that the Claimant has had ample time to pursue this claim for benefits but has not done so. Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss the within claim for initial workers' compensation benefits should be granted pursuant to the provisions of Ark. Code Ann. §11-9-702 (a)(4) , and Rule 099.13. Accordingly, this claim is hereby respectfully dismissed *without prejudice* to the refile of it within the limitation period specified by 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 due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of his letter-claim for workers' compensation benefits in October 2023, and he has not objected to his claim being dismissed. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits.

4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702 (a)(4), and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 (a)(4) and Rule 099.13, this claim is hereby respectfully dismissed, *without prejudice*, to the refiling within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge