

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H104834**

KELLI S. HELLUMS, EMPLOYEE	CLAIMANT
AREA AGENCY ON AGING WESTERN ARKANSAS, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES/.INSURANCE CARRIER	RESPONDENT

OPINION/ORDER FILED JUNE 20, 2024

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

Claimant is represented by MATTHEW J. KETCHAM, Attorney, Fort Smith, Arkansas.

Respondents are represented by MELISSA WOOD, Attorney, Little Rock, Arkansas

OPINION/ORDER

On March 15, 2024, respondents filed a Motion to Dismiss pursuant to A.C.A. §11-9-702, alleging that it had been more than six months since claimant filed her Form AR-C with the Commission, but she had not made a request for a hearing during that time. Respondents also requested dismissal for failing to prosecute her claim pursuant to Commission Rule 099.13. Claimant opposed the dismissal and a hearing on respondents' motion was conducted on June 5, 2024.¹

A review of the chronology of events in this matter is necessary to determine whether the motion should be granted. On August 8, 2022, claimant filed Form AR-C, alleging a compensable injury on August 6, 2020. A request for a hearing and a prehearing questionnaire was filed by claimant on November 29, 2022. However, because the AR-C was filed two days after the two-year anniversary

¹ Claimant was represented at the hearing by her counsel; she had a family emergency that required her to be out of state at the time of the hearing. Her attorney did not intend to call her as a witness and asked that she be excused, which I allowed.

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of the injury, respondents took the position that the matter was now barred by the statute of limitations and sought to have the matter dismissed as untimely.

The parties submitted a stipulated record as to the facts. Guided by a previous opinion from the Full Commission that applied Rule 6 of the Arkansas Rules of Civil Procedure to situations when the statute of limitations expires on a weekend or a holiday,² I determined that since August 6, 2022, was a Saturday, the filing on August 8, 2022, was timely. An order to that effect was entered on April 6, 2023. Respondent filed a timely appeal of that decision on May 4, 2023. On February 14, 2024, the Full Commission affirmed my ruling.

Having reviewed the exhibits introduced at the present hearing, I find that this matter should not be dismissed under either A.C.A. §11-9-702(a)(4) or Commission Rule 099.13. The statute 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 limitation periods specified in subdivisions (a)(1)-(3) of this section."

To be sure, it was more than six months since claimant filed for her claim for initial benefits (August 8, 2022) and from her first request for a hearing (October 27, 2022) until respondents filed the present Motion to Dismiss (March 15, 2024). However, claimant was not able to proceed with her claim before the statute of limitations defense had been decided by me, and then affirmed on appeal. She requested a hearing on April 15, 2024, a month after the time for appealing the Full

² After that decision was rendered, administrative law judges were directed not to cite Full Commission opinions as precedent.

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Commission's decision in her favor on the statute of limitations issue.³ As such, I find that her request for a hearing is timely under the facts of this case.

Furthermore, I do not find that claimant's inactivity in this matter before the AR-C was filed can be counted against her under Commission Rule 099.13. which 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 claim was immediately accepted as compensable in August 2020, and claimant was provided medical benefits. A joint petition was submitted to the Commission on June 14, 2021, but was never finalized. As the statute of limitations was almost reached, a claim for benefits was finally filed. A plain reading of Rule 13 requires there be a claim for a dismissal to be entered; without a claim, there is nothing to be dismissed. I decline to find the time before the matter was filed should be considered in determining whether there has been a "want of prosecution."

Therefore, finding that nothing before the claim was filed is relevant to a determination that claimant had failed to prosecute this matter, and that the delay since the claim was filed was due to litigation on the question of the application of the statute of limitations, it would be an improper application of Commission Rule 13 and A.C.A. §11-9-702(a)(4), as well as an abuse of discretion, to dismiss this matter under this facts.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE

³ At the hearing on the present motion, claimant's attorney pointed out that respondent had 30 days following the decision of the Full Commission to the Arkansas Court of Appeals.