

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H303330

ALMA M. HICKS,
EMPLOYEE

CLAIMANT

HAMBURG JR. HIGH SCHOOL,
EMPLOYER

RESPONDENT

AR SCHOOL BOARDS ASSOC. WCT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 17, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

The Claimant, Pro Se, appeared at the hearing.

The Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to a Motion to Dismiss for Failure to Prosecute filed by the Respondents. A hearing was conducted on the motion to dismiss on April 2, 2025, in El Dorado, Arkansas. Thus, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the April 2, 2025, hearing transcript and exhibits. In that regard, Commission's Exhibit 1 includes eight (8) actual pages, which has been marked accordingly; and Respondents' Exhibit 1 consisting of sixteen (16) numbered pages was marked as thus so.

The Claimant, Ms. Alma Hicks, and her son, D'Juan Hicks, testified during the hearing.

Reasonable notice of the dismissal hearing was had all the parties in the manner set by applicable law.

Background

This is the second dismissal hearing to be held in this claim. The record reflects the following procedural history:

The Claimant's former attorney filed a Form AR-C with the Commission on May 23, 2023, alleging that the Claimant sustained an accidental injury on March 14, 2023, while working for Hamburg Jr. High School, the respondent-employer in this matter. According to this form, the Claimant allegedly sustained injuries to her face and head while moving a desk. The Claimant's former attorney requested only additional benefits.

On May 24, 2023, the Respondents initially filed a Form AR-2 with the Commission accepting this as a "medical only claim." Subsequently, the Respondents filed an amended Form AR-2 on September 18, 2023, accepting the claim as being compensable and paid some medical benefits and temporary total disability compensation to and on behalf of the Claimant.

Later, the Claimant's attorney filed a motion to withdraw from representing her in this matter. On June 25, 2024, the Full Commission entered an order granting the motion.

Subsequently, the Claimant did not pursue her claim for additional workers' compensation benefits. Most notably, the Claimant did not make a bona fide request for a hearing.

Therefore, on July 8, 2024, the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a certificate of service to the Claimant.

The first dismissal hearing was held on September 4, 2024. The Claimant appeared at the dismissal hearing. The Respondents appeared at the hearing through their attorney. Counsel argued for dismissal of this case because the Claimant had not sought any type of bona fide hearing

since the filing of the Form AR-C, which was done in May 2023. At that time, the Claimant requested that her claim not be dismissed. Specifically, the Claimant stated that she had experienced personal challenges and been unable to prosecute her claim. However, the Claimant indicated that she wished to pursue her claim and would do so.

Therefore, in an opinion filed October 22, 2024, I denied the Respondents' motion based on the Claimant's promise to pursue her claim. Specifically, I made the following findings:

After considering the evidence before me, I find that the Respondents' motion to dismiss this claim due to a lack of prosecution to be well taken. However, I find that the dismissal of this claim should be denied at this time because the Claimant has indicated that she intends to pursue additional benefits in this matter. Accordingly, the Respondents' motion to dismiss this claim is hereby respectfully denied.

Of note, during the hearing, the Claimant was cautioned that failure to prosecute her claim could result in it being dismissed.

As a result, on October 22, 2024, I returned the case to the Commission's general files. However, since this time, the Claimant has taken no action whatsoever to request a hearing or otherwise taken any steps to pursue her claim.

Therefore, on January 16, 2025, the Respondents filed a second Motion to Dismiss for Failure to Prosecute. Specifically, counsel moved for dismissal of this claim under the authority of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13. Pursuant to this motion, a Hearing Notice was sent to the parties on February 25, 2025, scheduling the dismissal hearing for April 2, 2025, at the Union County Courthouse, in El Dorado.

The second dismissal hearing was held as scheduled. The Claimant appeared at the hearing and was accompanied by her son, D'Juan Hicks. Counsel for the Respondents argued for dismissal of this claim because the Claimant has been non-responsive to the Medical Cost Containment Division at the Commission regarding her request for a change of physician, and she has made no

request for a hearing. However, the Claimant again objected to her claim being dismissed. Specifically, the Claimant indicated that she has experienced some life-changing challenges, which have prevented her from being able to pursue her claim. In this regard, unfortunately, the Claimant's brother and her mother passed away on the first of this year. Also, the Claimant testified that in recent months, she has had to find other housing and move. However, the Claimant again testified that she intends to pursue her claim for additional benefits, which includes a request for a change of physician.

Discussion

In the case at bar, the statutory provisions, and Arkansas Workers' Compensation Rule applicable in the Respondents' motion to dismiss this claim for a lack of prosecution are outlined below:

In that regard, 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.

AWCC 099.13 reads:

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.

As the moving party, under Ark. Code Ann. §11-9-705(a)(3) (Repl. 2012), the Respondents must prove their entitlement to the relief requested—dismissal of this matter—by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force.

Barre v. Hoffman, 2009 Ark. 373, 326 S.W. 3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

With respect to the evidence described above, (1) the parties were provided with reasonable notice of the second Motion to Dismiss for Failure to Prosecute and the hearing on it; and (2) the Claimant has made no bona fide request for a hearing since the filing of the Form AR-C in May 2023, and the first dismissal hearing. However, the Claimant appeared at the second dismissal hearing and asked that her claim not be dismissed because she intends to take immediate steps to pursue her claim, starting with a request for a change of physician.

While I sympathized immensely with the Claimant's circumstances during the hearing, I noted the importance of the need for her to act in furtherance of her claim as soon as possible. Both the Claimant and her son indicated that they understood the need for her to pursue this claim given the fact that this is the second time a dismissal hearing has been held on this claim. Of significance, the Claimant testified that after the hearing, she would contact the Medical Cost Containment Division and provide them with the name of the doctor she wishes to be evaluated by for her compensable injury.

Therefore, based on the evidence before me, I find the Respondents' second motion to dismiss this claim due to a lack of prosecution to be well taken. Nevertheless, I am persuaded that the dismissal of this claim should be denied at this time because the Claimant has indicated that she intends to pursue additional benefits, in the form of a request for a change of physician. Accordingly, the Respondents' most recent motion to dismiss this claim is hereby respectfully denied.

However, I admonished the Claimant that if she does not pursue her claim in a timely fashion, she runs the risk of it being dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record, 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 a second motion to dismiss, for which a hearing was held. The Claimant has indicated that she will pursue her claim in the near future.
3. The Respondents' second motion to dismiss is hereby respectfully denied.

ORDER

In accordance with the foregoing findings of fact and conclusions of law set forth above, the Respondents' most recent Motion to Dismiss for Failure to Prosecute is hereby respectfully denied at this time.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge