

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H403086

MARCUS L. JOHNSON,
EMPLOYEE

CLAIMANT

COLLIER INVESTMENTS d/b/a MANPOWER,
EMPLOYER

RESPONDENT

GRANITE STATE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

GALLAGHER BASSETT SERVICES, INC.,
THIRD PARTY ADMINISTRATOR (TPA)

RESPONDENT

OPINION FILED APRIL 30, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in Texarkana, Miller County, Arkansas.

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

The Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Respondents' motion to dismiss, which they filed with the Commission on February 11, 2025. A hearing was conducted on the Respondents' motion on April 8, 2025, in Texarkana, Arkansas.

Accordingly, the sole issue for determination at the dismissal hearing was whether this claim should be dismissed due to the Claimant's failure to prosecute it in a timely manner pursuant to the provisions of Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the April 8, 2025, hearing transcript and the documentary evidence held therein. Specifically, the documents admitted into evidence include Commission’s Exhibit 1, consisting of eight (8) pages; and Respondents’ Exhibit 1, comprising nine (9) numbered pages of pleadings, forms, and correspondence, relating to this claim.

No testimony was taken at the hearing.

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

Discussion

The record reflects the following procedural history:

The Claimant filed a Form AR-C with the Commission on May 10, 2024, asserting his entitlement to Arkansas workers’ compensation benefits. Per this document, the Claimant described the cause of his accidental injury essentially as follows: “I sustained injuries to the right side of my face, injuring his right eye, when I was struck by a piece of metal.” He alleged an injury date of March 18, 2024. The Claimant checked off all the boxes for both initial and additional workers’ compensation benefits. Yet, at that time, the Claimant made no bona fide request for a hearing with respect to his claim.

Subsequently, on December 9, 2024, the Respondents filed a Form AR-2 with the Commission controverting the claim in its entirety. Specifically, per this document, the branch manager wrote: “Claim denied. EE/employee is not an employee of Manpower.”

Since the filing of the Form AR-C in May 2024, the Claimant has taken no action whatsoever to prosecute or otherwise resolve his claim for workers’ compensation benefits.

As a result, on February 11, 2024, the Respondents filed with the Commission, a Motion to Dismiss and Incorporated Brief in Support. This pleading was accompanied by a certificate of

service confirming that the Respondents' attorney served a copy of the foregoing pleading on the Claimant by mailing a copy thereof to him via the United States Postal Service.

I wrote the Claimant on February 14, 2025, notifying him of the Respondents' motion to dismiss his claim due to a lack of prosecution. This letter was sent via both certified mail and first-class mail to the address the Claimant had furnished to the Commission. Per this letter, the Claimant was given twenty (20) days from the date of the letter to file a response to the motion.

The above letter mailed to the Claimant by first-class mail has not been returned to the Commission. However, on February 27, the letter mailed to the Claimant by certified mail was returned to the Commission, stating, "Return to Sender – Not Deliverable as Addressed – Unable to Forward."

There was no response from the Claimant.

On March 7, 2025, I sent a Notice of Hearing to the parties notifying them that I had scheduled a hearing on the Respondents' motion to dismiss. I scheduled the dismissal hearing for Tuesday, April 8, 2025, in Texarkana, Arkansas.

Said notice was mailed to the Claimant by way of both certified and first-class mail.

On March 18, the Postal Service returned the Claimant's hearing notice to the Commission because they were unable to deliver this item to him. However, the letter mailed to the Claimant via first-class mail has not been returned to the Commission. The evidence thus preponderates that the Claimant received notice of the hearing.

Still, there was no response from the Claimant.

However, the hearing on the Respondents' motion to dismiss was held as scheduled. The Claimant failed to appear at the hearing. However, the Respondents appeared through counsel and argued that the case be dismissed *without prejudice* under Ark. Code Ann. §11-9-702 (a)(4), §11-

9-702 (d), and Commission Rule 099.13 due to the Claimant's failure to prosecute his claim. Specifically, counsel for the Respondents noted, among other things, that it is their position that it has more than six (6) months after the filing of the Form AR-C, but the Claimant has never made a bona fide hearing request.

Adjudication

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

Specifically, 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.

Additionally, 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)

The evidence shows that the Claimant has failed to respond to the written notices of this Commission; and he did not appear at the hearing to object to the dismissal. Moreover, the Claimant has not made a bona fide request for a hearing since the filing of the Form AR-C, which was done more than six (6) months ago. Thus, all the foregoing establishes that dismissal of this claim is warranted under the provisions of Ark. Code Ann. §11-9-702 (a) (4), §11-9-702 (d), and Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

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. On May 10, 2024, the Claimant filed a Form AR-C with the Commission in this matter asserting his entitlement to workers' compensation benefits due to an accidental injury to his occurring on March 18, 2024.
3. Since the filing of the Form AR-C, more than six (6) months ago, the Claimant has not ever made a bona fide request for a hearing.
4. The Respondents filed a Motion to Dismiss and Incorporated Brief in Support with the Commission on February 11, 2025, asking that the claim be dismissed because the Claimant has never made a bona fide request for a hearing and failed to prosecute his claim.
5. Reasonable notice of the motion to dismiss and hearing was had on all the parties. However, the Claimant has failed to respond to the notices of this Commission and did not appear at the hearing to object to his claim being dismissed.
6. The evidence preponderates that the Respondents' motion to dismiss this claim for a lack of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Rule 099.13 *without prejudice*, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13 to the refiling of it within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge