

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H206879

CAROLYN W. MACON, EMPLOYEE

CLAIMANT

GEORGIA PACIFIC, LLC., EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE CO./ESIS, INC. CARRIER/TPA

RESPONDENT

OPINION FILED 12 SEPTEMBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 4 September 2024 in Little Rock, Arkansas.

The pro se claimant did not appear.

Mr. Rick Behring, Newkirk & Jones, appeared on behalf of the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 4 September 2024. This case relates to an alleged workplace injury, sustained on or about 20 July 2022. The claimant filed a Form AR-C on 23 September 2022 alleging a right side injury from her lower back to toe. A First Report of Injury was filed on 30 September 2022, and a Form AR-2 was filed on 5 October 2022 accepting the claim.

On 12 July 2024, the respondents requested a dismissal of this matter for failure to prosecute the claim, noting that nearly two years passed without a bona fide request for a hearing on a matter requiring adjudication. A letter from the Commission to the claimant communicating that motion's filing was dated 16 July 2024, and another letter setting a hearing on the motion was dated 13 August 2024. Those letters provide notice that the claimant was not required to appear if she did not object to the dismissal of the claim.

I noted at the hearing that mailings from the Commission to claimants are sent via both First Class and Certified Mail with return receipts requested. Returned mail is regularly appended to the Commission's file. This claim file includes only a return of one of the Certified Mailings, indicating that it was unclaimed. The First Class letters were not returned as undeliverable.

The respondents appeared on 4 September 2024, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the file reflects no request for a hearing on a claim in the relevant time preceding the filing of their motion. And the claimant did not appear to resist the dismissal of this claim.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 99.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents' counsel, I find that the respondents' Motion to Dismiss should be granted and that the matter should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE