

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H303449

DON D. MALLORY,
EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE/UPS, INC.,
EMPLOYER

RESPONDENT

LM INSURANCE CORPORATION,
CARRIER

RESPONDENT

OPINION FILED JANUARY 24, 2025

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

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

Respondents represented by the Honorable David C. Jones, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on January 15, 2025, in the above-referenced matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether this case should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and 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.

No testimony was taken.

The record consists of the transcript of January 15, 2025, hearing and the documents held therein. Commission's Exhibit 1 consists of three (3) pages, which has been marked accordingly;

and the Respondents introduced into evidence an exhibit consisting of forty-nine (49) pages, and it was thus marked Respondents' Exhibit 1.

Procedural History

The Claimant alleged that he sustained a compensable injury while working for United Parcel Service/UPS during and in the course of his employment on May 24, 2023. Although the Claimant reported an injury to his employer, he did not file a Form AR-C with the Commission on this alleged workers' compensation claim. However, the evidence before me shows that the Claimant reported having sustained multiple gunshot wounds as the result of a possible robbery or criminal assault while returning to his package car following his lunch break. No further details surrounding this incident were provided.

The Respondents' claims specialist filed a Form AR-2, with the Commission on June 28, 2023. At that time, the respondent-carrier's stated position was that this claim was pending further investigation. Therefore, the claims specialist asked that the Commission's Compliance Division grant her thirty (30) days to investigate the claim. This request was granted, and the carrier was given until June 29, 2023, to file a Form AR-2 regarding their position.

On June 28, 2023, the claims specialist filed a Form AR-2 with the Commission controverting this claim pending further investigation.

It appears that the Claimant retained legal counsel in this matter. However, on August 22, 2023, the Claimant's attorney notified the Commission that her law firm no longer represented the Claimant in his claim for workers compensation benefits.

Subsequently, on September 18, 2023, the Claimant wrote the following letter to the Commission. "I am requesting a hearing for Workers[sic] Comp [sic] denial." On October 25, 2023, this claim was assigned to the Commission's Legal Advisors Division for a voluntary

mediation conference. An attorney from the Legal Advisors Division returned the case to the Commission's general file because attempts to set up a mediation conference failed.

Afterward, there was no action whatsoever taken on the part of the Claimant to prosecute his claim or pursue benefits.

Therefore, on November 12, 2024, the Respondents filed a Motion to Dismiss and Brief in Support of the Motion Dismiss, with the Commission, along with a Certificate of Service to the Claimant via the United States Postal Service.

The Commission sent a Notice to the Claimant on November 14, 2024, informing him of the Respondents' motion to dismiss, and a deadline of twenty (20) days for filing a written response. This letter was sent via first-class and certified mail. Information received by the Commission from the United States Postal Service verifies that they were also unable to find any delivery information on this item in their records. However, the notice sent by first-class mail has not been returned to the Commission.

Pursuant to a Hearing Notice dated December 3, 2024, the Commission notified the parties that this claim had been set for a hearing on the Respondents' motion to dismiss. Said dismissal hearing was scheduled for January 15, 2024¹ at 9:30 a.m., with the hearing being held at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas. This notice was sent via first-class mail and certified mail.

Information received from the Postal Service shows that this item was delivered to the Claimant's residence, and he signed for the Hearing Notice on December 6, 2024. *The Recipient's Signature section bears the Claimant's printed name, along with his signature.* Moreover, the

¹ There is a clerical error on the Hearing Notice. It states the incorrect year of 2024. Instead, the notice should read that the dismissal hearing was scheduled for January 15, 2025.

notice sent via first-class mail has not been returned to the Commission. Based on the foregoing, the evidence preponderates that the Claimant received notice of the dismissal hearing.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear for the hearing. However, the Respondents appeared through their attorney.

The Respondents' counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, Counsel moved that this claim be dismissed *with or without* prejudice under Ark. Code Ann. §11-9-702(a)(4) and (d) and Commission Rule 099.13. The Respondents' attorney also stated that the Claimant has returned to work for UPS. Per counsel, the claim was denied because the Claimant's injuries were not incurred during and in the course and scope of his employment with UPS; and that the circumstances surrounding his May 24, 2023, assault resulted due to personal reasons unrelated to his employment duties.

Nevertheless, in the present matter, no Form AR-C has ever been filed in this case. Typically, a Form AR-C is the means for filing a "formal claim" for Arkansas workers' compensation benefits. I am cognizant that other means exist to file a claim for Arkansas workers' compensation benefits other than a Form AR-C. Hence, the Respondents have asserted that there exists a document of record that would constitute the filing of a claim in this matter.

Similarly, the Respondents' attorney noted that although the Claimant did not file a formal Form AR-C, he wrote a letter to the Commission regarding his claim being controverted by the Respondents and requested a hearing pursuant to the denial. The Respondents' counsel contended that the Claimant's September 18, 2023, letter to the Commission meets the requirements under case law for the filing of a claim for initial workers' compensation benefits. I am persuaded that

said letter clearly proves that the Claimant filed a claim for initial benefits, for which he requested a hearing.

Decision

Therefore, the statutory provision and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) states:

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 refileing of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Furthermore, 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)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits since the filing of his letter claim more than six (6) months ago; and nor has he resisted the motion for dismissal of his workers' compensation claim despite having received notice of the hearing.

Here, the evidence preponderates that the Claimant has clearly failed to prosecute this claim for initial workers' compensation benefits. Furthermore, I am convinced that the Claimant has abandoned his claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for initial workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refiling of it within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on 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, for which a hearing was held.
3. Appropriate notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
4. The evidence preponderates that the Respondents' motion to dismiss this claim for lack of prosecution is well founded, and should be hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is made pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, *without prejudice* to the refiling of this claim

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within the limitation period specified under the Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge