

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS.: H304038 & H302541

MICHAEL NEPOTE, EMPLOYEE	CLAIMANT
HARPS FOOD STORES, INC., SELF-INSURED EMPLOYER	RESPONDENT
HARPS FOOD STORE, INC., CCMSI, INSURANCE CARRIER /THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JUNE 21, 2024

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

The Claimant, pro se, failed to appear at the hearing.

Respondents represented by the Honorable Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

A hearing was held on April 24, 2024 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced claims should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (d) (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 set by law.

The record consists of the transcript of the April 24, 2024, hearing and the documents contained therein. Specifically, Commission's Exhibit 1 consists of twenty-nine (29) numbered

pages; and the Respondents' Hearing Exhibit covering twelve (12) totaled pages was marked as Respondents' Exhibit 1.

Discussion

On June 26, 2023, the Claimant's former attorney filed with the Commission two claims for Arkansas workers' compensation benefits on behalf of the Claimant by way of a separate Form AR-C for each claim. The Claimant's first alleged work-related injury occurred on May 13, 2022, and that is for AWCC Claim No. H304038. Specifically, per this document, the Claimant alleged he injured his neck, left shoulder, left elbow, neck and other whole body during the course and scope of his employment with the respondent-employer. In fact, the Claimant's attorney marked all the boxes for every conceivable benefit under the law in connection with this claim. On that same date, the Claimant's attorney filed another claim for benefits which is AWCC Claim No. H302541. Per this documentation, the Claimant alleged injuries to identical body parts in the earlier Form AR-C. However, the date of the alleged accident for this claim is September 15, 2022. Similarly, Claimant's attorney marked off all the boxes for both initial and additional workers' compensation benefits for this most recent claim.

The respondent-insurance carrier filed a Form AR-2 with the Commission on May 16, 2023, accepting the September 15, 2022, accident injury as a compensable claim. The evidence shows that the Respondents have paid some benefits on this claim. Additionally, on July 14, 2023, the Respondents filed another Form AR-2 with the Commission accepting the May 13, 2022, work-related accident as a compensable left shoulder injury, but as a "medical only" claim.

Subsequently, on January 29, 2024, the Claimant's attorney filed with the Commission a motion to withdraw as counsel of record in both claims. The Full Commission entered an order on

March 5, 2024, granting the Claimant's attorney motion to withdraw from representing him in both of these claims.

Since this time, there has been no bona fide action on the part of the Claimant to prosecute his claims for workers' compensation benefits, or otherwise pursue a resolution in this matter.

As a result, on March 12, 2024, the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute these claims. The Respondents notified the Claimant of their motion for dismissal by way of depositing a copy of the foregoing pleading in the mail via the United States Postal Service.

The Commission mailed a letter-notice to the Claimant to his last known address, on March 13, 2024. Said letter was sent by first-class mail and certified mail. Per this correspondence, the Claimant was given a deadline of twenty (20) days for filing a written response to the Respondents' motion.

However, the United States Postal Service informed the Commission on March 14, 2024, that they delivered this item to the Claimant's residence and left it with an individual. Per the proof of delivery information concerning this item received by the Commission from the Post Office, the Claimant accepted delivery of this parcel of mail. However, only the Claimant's last name is legibly printed on this document.

Yet, there has been no response from the Claimant.

Therefore, pursuant to a Hearing Notice dated March 27, 2024, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss these claims due to a lack of prosecution. The Commission mailed the notice of hearing to the Claimant via certified and first-class mail. Said hearing was scheduled for April 24, 2024, at 11:00 a.m., at the Arkansas Workers' Compensation Commission's locale in Little Rock, Arkansas.

The hearing notice sent to the Claimant via certified mail was delivered to the Claimant's home and left with an individual on March 29, 2024. Tracking information received by the Commission from the Post Office shows that the signature of the recipient of this parcel of mail is unknown because it is scribbled. Conversely, the notice sent by first class mail has not been returned to the Commission.

Still, there has been no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the dismissal hearing. However, the Respondents appeared through their attorney.

The Respondents' counsel noted that the Claimant has failed to promptly prosecute these claims for additional workers' compensation benefits. Counsel further noted that the Claimant did not respond to any of the correspondence from this Commission, and he did not appear at the hearing to object to his claims being dismissed. The Respondents' attorney indicated that the Claimant has clearly illustrated an unwillingness or a lack of a desire to prosecute these claims. Therefore, counsel moved that these claims be dismissed under Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice* due to all the afore reasons.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the motion for dismissal of these claims due to a lack of prosecution are outlined below:

Specifically, 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)

My review of the evidence shows that the Claimant has had ample time to pursue his claims for additional workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise taken any affirmative action to prosecute his claims since the filing of the Form AR-Cs in June 2023. Most notably, the Claimant has not responded to the Notices of this Commission, nor has he contested the dismissal request or objected to his claims being dismissed. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has abandoned claims for workers' compensation benefits.

After consideration of the evidence before me, I find the Respondents' Motion to Dismiss for Failure to Prosecute to be well founded. Accordingly, pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, these claims for additional workers' compensation benefits are hereby dismissed *without prejudice* to the refiling of each claim per the limitation period specified within the applicable limitation period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of 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 these claims due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not requested a hearing on these claims since the filing of the Form AR-Cs on June 26, 2023, which was done almost a year ago. Hence, the evidence preponderates that the Claimant has failed to prosecute his claims for additional workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss these claims for a lack of prosecution is hereby granted, *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, to the refiling of each claim within the limitation period specified by law.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, these claims are hereby dismissed pursuant to Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of them, within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge