

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.:H301338

TYSHAUN RAMOS, EMPLOYEE	CLAIMANT
FOURJAY, LLC, d/b/a WENDY'S, EMPLOYER	RESPONDENT
PHOENIX INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
TRAVELERS INDEMINTY COMPANY, THIRD PARTY ADMINSTRATOR	RESPONDENT

OPINION FILED JUNE 25, 2024

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

Claimant, pro se/unrepresented, failed to appear at the hearing.

Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 10, 2024, a hearing was held on the Respondents' motion to dismiss for a lack of prosecution, in this alleged claim for Arkansas workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or 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.

The record consists of the transcript of the April 10, 2024, hearing and the documents held therein. Specifically, Commission's Exhibit 1 contains a total of six (6) pages; and the Respondents' Hearing Documents Exhibit which consist of six (6) totaled pages was marked as Respondents' Exhibit No. 1.

No testimony was taken at the hearing.

Procedural History

The Claimant has asserted that he sustained a work-related injury in the course and scope of his employment with the respondent-employer on February 22, 2023, for which he is entitled to Arkansas workers' compensation benefits.

On May 31, 2023, the Claimant's former attorney filed an Entry of Appearance with the Commission stating that she had been retained by the Claimant to represent him in the above-referenced claim. However, on November 8, 2023, the Claimant's attorney of record in this claim notified the Commission that she no longer represented the Claimant in this matter.

Since this time, the Claimant has failed to make a request for a hearing and not taken any affirmative action to pursue his alleged claim for workers' compensation benefits. The record does not show that the Respondents ever paid any benefits on this alleged claim. Therefore, this is an alleged claim for initial benefits.

The Respondents' attorney filed a letter motion to dismiss with the Commission per correspondence dated January 2, 2024. It appears that the Respondents served this pleading upon the Claimant by depositing a copy of it in the mail with the United States Postal Service.

On February 13, 2024, the Commission sent a letter to the Claimant letting him know again about the motion for dismissal of his claim for workers' compensation. Said letter notice was sent to the Claimant by way of first-class and certified mail via the Postal Service. Per this letter, the

Claimant was given a deadline of twenty (20) days for filing a written response/objection with the Commission.

In that regard, on March 6, 2024, the Postal Service returned to the Commission the letter notice sent to Claimant via certified mail. This correspondence was marked: “Return to Sender – Unclaimed – Unable to Forward.” However, the letter sent via first-class mail has not been returned to the Commission.

Yet, there was no response from the Claimant whatsoever regarding the motion to dismiss his alleged work-related injury.

On April 10, 2024, the Commission notified the parties pursuant to an Amended Notice of Hearing¹ dated March 6, 2024, that this claim had been placed on the docket for a dismissal hearing. Said hearing was scheduled to be heard on April 10, 2024, at the Arkansas Workers’ Compensation Commission, in Little Rock, Arkansas.

This hearing notice was sent to the Claimant via first-class and certified mail via the Postal Service. The notice mailed to Claimant via certified mail was returned to the Commission on March 28, 2024, marked: “Return to Sender – Unclaimed – Unable to Forward.” However, the hearing notice sent via first-class mail has not been returned to the Commission. Therefore, the evidence before me preponderates that the Claimant received notice of the dismissal hearing.

Yet once again, the Claimant did not respond or object to his alleged claim being dismissed.

Nevertheless, a hearing was conducted on the Respondents’ motion to dismiss as scheduled. However, the Claimant failed to appear at the dismissal hearing to object to his alleged claim for workers’ compensation benefits being dismissed. The Respondents appeared for the dismissal hearing through their attorney. Counsel for the Respondents argued, among other things,

¹ It appears that the Hearing Notice was designated as an “Amended” Hearing Notice due to a clerical error.

that the Claimant has done nothing to pursue his claim for benefits. He specifically stated that the Claimant has not ever requested a hearing or responded to the motion for dismissal in any manner. Therefore, the Respondents’ attorney essentially moved that this claim be dismissed due to a lack of prosecution under Ark. Code Ann. §11-9-702, and Commission Rule 099.13.

Adjudication

In the present matter, the record proves that this is an alleged claim for initial workers’ compensation benefits. Typically, a Form AR-C is the recognized means for filing a “formal claim.” However, no Form AR-C has ever been filed in this matter. It is well established under workers’ compensation law that other means exist to file a claim for Arkansas workers’ compensation benefits other than a Form AR-C. On the contrary, I am unable to find any such document of record that would constitute the filing of a claim for initial workers’ compensation benefits.

Because no claim has ever been filed by the Claimant, I am compelled to find that there is no claim subject to dismissal pursuant to the Respondents’ motion to dismiss. Therefore, under these circumstances, the Respondents’ motion is hereby respectfully denied and dismissed in its entirety.

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 Claimant has alleged that he sustained a work-related injury on February 22, 2023, while performing his employment duties for the respondent-employer. This would be considered a claim for initial benefits since there is no documentation of record demonstrating that the

Respondents paid any benefits to, or on behalf of, the Claimant in this matter.

3. The Claimant never filed a Form AR-C or requested a hearing in connection with his alleged work-related claim. Nor is there any document of record filed by the Claimant or his former attorney that suffices as the filing of an initial claim for benefits.
4. The Respondents filed with the Commission a motion for dismissal of this claim due to a lack of prosecution, for which a hearing was held.
5. Appropriate Notice of the dismissal hearing was duly served on all parties at their last known address, in the manner prescribed by law.
6. Because no claim exists to be subject to dismissal, the Respondents' motion to dismiss is respectfully denied and dismissed in its entirety.

ORDER

Based upon the foregoing findings of fact and conclusions of law, I have no alternative but to respectfully deny the Respondents' motion to dismiss because no claim for workers' compensation benefits was ever filed by the Claimant to be subject to dismissal.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge