

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H407406

RITA L. STROTHER,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED MAY 2, 2025

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

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

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 a motion to dismiss filed by the Respondents. A hearing on the motion was conducted on April 22, 2025, in Little Rock, Arkansas. Thus, presently the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the April 22, 2025, hearing transcript and documentary evidence. In that regard, Commission's Exhibit 1 includes seven (7) actual pages, which has been marked accordingly, and Respondents' Exhibit 1 consisting of twenty-seven (27) numbered pages was marked as thus so.

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

No testimony was taken at the hearing.

Background

The record reflects the following procedural history:

On November 13, 2024, the Claimant filed a Form AR-C, with the Commission, alleging that she sustained an accidental injury, on October 23, 2024, while working for the respondent-employer. According to this document, the Claimant allegedly sustained an injury to her left elbow, the form of *tennis elbow*, as a result of performing her employment duties. Per this form, the Claimant requested only initial benefits, in the form of temporary total disability compensation and medical expenses.

The Respondents initially filed a Form AR-2 on November 15, 2024, with the Commission accepting this as a “medical only claim.” However, on November 25, the respondent-employer filed an amended Form AR-2 controverting the claim in its entirety. Per this document, the Respondents took the following position: “Claim is being controverted. Respondents dispute that the associate sustained a compensable injury arising out of and in the course and scope of employment.”

Since the filing of the Form AR-C, the Claimant has failed to prosecute or otherwise pursue her claim for workers’ compensation benefits. Specifically, after filing her claim for initial compensation, the Claimant has made no bona fide request for a hearing with respect to her claim.

As a result, on February 18, 2025, the Respondents filed with the Commission a Respondents’ Motion to Compel or Dismiss and Incorporated Brief in Support, along with a certificate of service to the Claimant. Per this verification, the Respondents served a copy of the foregoing pleading on the Claimant by depositing a copy of it in the United States Mail to different address listed with the Commission.

Subsequently, on February 25, 2025, I wrote to the Claimant and requested a written response to the motion within twenty (20) days. Said letter was sent to the Claimant by both first-class mail and certified mail to the address listed by the Claimant with the Commission. Said letter was sent via the United States Postal Service.

Per tracking information received from the Postal Service, on February 27, 2025, the dismissal hearing notice sent by certified mail to the Claimant was delivered to her home address as listed above and left with an individual. However, the signature of the recipient of said letter is illegible. Regarding the letter sent by first-class mail, it has not been returned to the Commission.

My office sent a Notice of Hearing to the parties on March 18, 2025, scheduling the dismissal hearing for April 22, 2025. Said hearing notice was sent to the Claimant by both first-class and certified mail to the same address as before.

Per tracking information received from the United States Postal Service, the hearing notice sent via certified mail was delivered to the Claimant's home on March 20, 2025, and left with an individual. Again, the signature of the recipient taking delivery of this item is illegible. Yet, the notice sent by first-class mail has not been returned to the Commission. Thus, the evidence preponderates that reasonable notice of the dismissal hearing was made upon the Claimant.

Therefore, the dismissal hearing was conducted on the Respondents' motion to dismiss this claim as formerly scheduled. Despite having received notice of the dismissal hearing, the Claimant did not appear at the hearing. However, the Respondents appeared at the hearing through their lawyer. The Respondent's counsel argued, among other things, for dismissal of this claim because the Claimant has made no bona fide request for a hearing or taken any action to prosecute or otherwise resolve her claim since the filing of the Form AR-C in November 2024. Specifically,

the attorney for Respondents moved for dismissal of this claim under the authority of Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13.

Adjudication

The statutory provision and Arkansas Workers' Compensation Rule applicable to the Respondents' motion for dismissal of this claim for initial workers' compensation benefits 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.

Commission Rule 099.13 provides:

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 she did not appear at the hearing to object to the motion. Moreover, since the filing of the Form AR-C, which was done in November 2024, the Claimant has not made a bona fide request for a hearing with respect to her claim.

Considering all the foregoing, I am compelled to conclude that the Claimant has abandoned her claim for workers' compensation benefits. Based on all the aforementioned reasons, I find that the Respondents' motion to dismiss this claim is warranted. Therefore, pursuant to Commission Rule 099.13, this claim for initial benefits is hereby respectfully dismissed for want of prosecution. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

Consideration of the claim being dismissed under Ark. Code Ann. §11-9-702 (a) (4) (Repl. 2012) has been rendered moot.

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 November 13, 2024, the Claimant filed a Form AR-C with the Commission in this matter asserting her entitlement to initial workers' compensation benefits due to an accidental injury to her elbow occurring on October 23, 2024.
3. Since the filing of the Form AR-C, the Claimant has not made a bona fide request for a hearing.
4. The Respondents filed a motion to dismiss with the Commission on February 18, 2025, asking that the within claim be dismissed due to a lack of prosecution.
5. Reasonable notice of the motion to dismiss and hearing was had on all the parties.
6. The evidence preponderates that the Respondents' motion to dismiss this claim for want of prosecution is warranted.
7. That the Respondents' motion to dismiss is granted pursuant to Commission

Rule 099.13, *without prejudice*, to the refiling of the claim within the limitation periods specified by law.

8. A determination with respect to the issue for dismissal of this claim pursuant to Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) has been rendered moot.

ORDER

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

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge