

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G908137**

**LEXINGTON S. ARTHUR,
EMPLOYEE**

CLAIMANT

**STAFFMARK INVESTMENTS, LLC,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
CCMSI
INSURANCE CARRIER/TPA**

RESPONDENT

**AMENDED OPINION AND ORDER FILED JAUNUARY 12, 2023
HOLDING RESPONDENTS' MOTION TO DISMISS WITHOUT PREJUDICE IN
ABEYANCE FOR 45 DAYS**

Hearing conducted on Wednesday, January 4, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Lexington S. Arthur, pro se, of Hot Springs, Garland County, Arkansas, appeared in person at the hearing.

The respondents were represented by the Honorable Jarrod Parrish, Worley, Wood & Parrish, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, January 4, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.). The respondents filed a letter motion to dismiss with the Commission on November 14, 2022, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of both the respondents' motion to dismiss as well as a copy of the hearing notice at his current addresses of record via the United States Postal Service (USPS), First Class Certified Mail,

Return Receipt Requested, which he received on November 19, 2022. (Commission Exhibit 1). By letter dated November 29, 2022, the claimant attached a copy of the Form AR-C that he initially filed with the Commission. He stated he wanted...

...to request a continuance of my workers' compensation claim due to additional medical expenses. The employer is aware that I have a lifetime of medical procedures required due to my workplace injuries. I also need my medical records.

(AWCC File, Claimant's Letter to the Commission dated November 29, 2022, Claimant's Exhibit 1).

The hearing was recessed to allow the claimant (as well as his father and grandmother who attended the hearing with him) the opportunity to talk to one of the Commission's legal advisors and, thereafter, to the respondents' attorney. When the parties went back on the record it appeared there may exist an issue as to what extent the claimant may require future medical treatment – specifically, “continued vascular lab surveillance for life.” (CI's Ex. 1A; Respondents' Ex. 1).

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter by reference.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has neither requested a hearing nor has he taken any action to pursue claim as of the hearing date.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, and as I advised the parties on the record at the hearing, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. The ALJ will hold in abeyance a decision on the respondents' subject motion to dismiss without prejudice for a period of 45 days, or until Monday, February 20, 2023 (since 45 days from the hearing date falls on a Saturday).
3. The parties have 45 days from the hearing date, or until Monday, February 20, 2023, to obtain any and all additional information they require and to attempt to resolve any and all outstanding issues, if any remain.
4. If, within five (5) days after the expiration of this 45-day time-period the claimant does not request, in writing (with a copy to the respondents' attorney, of course), a hearing before the Commission and advise both the Commission and the respondents exactly what specific issues he believes are ripe for a hearing, the ALJ will grant the respondents' motion to dismiss filed November 14, 2022, without prejudice, and without the necessity of either the respondents filing another motion, and without holding another hearing on the motion.

If they have not already done so, the respondents shall pay the court reporter's invoice within twenty (20) days of the filing of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp