

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H207488**

**JESSE E. BOOTHE,
EMPLOYEE**

CLAIMANT

**SOUTH ARK. OIL CO., INC.,
EMPLOYER**

RESPONDENT

**EMPLOYERS PREFERRED INS. CO./
EMPLOYERS PREFERRED INS. CO.,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER FILED NOVEMBER 2, 2023,
GRANTING RESPONDENTS' MOTION TO DISMISS WITHOUT PREJUDICE**

Hearing conducted on Wednesday, November 1, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Jesse E. Boothe, pro se, of Magnolia, Columbia County, Arkansas, did not appear at the hearing.

The respondents were represented by the Honorable James A. Arnold II, of Ledbetter, Cogbill, Arnold, Harrison, LLP, Fort Smith, Sebastian County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, November 1, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Repl.).

The respondents filed a motion to dismiss with the Commission on September 5, 2023, 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 the respondents' motion to dismiss, as well as a copy of the hearing notice at her addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested. Thereafter, the claimant never responded to the subject motion to dismiss; she did not request a hearing, or contact

and/or try to contact the Commission by any means of communication; nor did she appear or cause anyone to appear on her behalf at the subject hearing.

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

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 reveals the claimant has failed and/or refused to prosecute her claim as required by the applicable statute and Commission rule.

Therefore, after a thorough consideration of the facts, issues, the applicable law, representations of the respondents' highly credible counsel, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having received due and legal notice of the respondents' motion to dismiss as well as due and legal notice of the subject hearing, the claimant neither responded to the motion in any way whatsoever, nor did she cause anyone to respond to the subject motion on her behalf. In addition, the claimant did not appear at the hearing, nor did she cause anyone to appear at the hearing on her behalf. Therefore, she has waived her right to a hearing on the respondents' motion to dismiss.
3. Moreover, the claimant has failed to prosecute her claim in any way whatsoever, as to date she has neither requested a hearing nor has she taken any action(s) whatsoever to pursue and/or to prosecute her claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed with

the Commission on September 5, 2023, should be and hereby is GRANTED pursuant to both *Ark. Code Ann.* Section 11-9-702(a)(4) and Commission Rule 099.13

Nothing in this opinion and order shall prevent or be construed to prevent the claimant or anyone acting with her authority and on her behalf from re-filing this claim so long as it is re-filed within the applicable deadlines specifically set forth in the Act.

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp