

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H103529**

**LANCE G. JEFFERS,
EMPLOYEE**

CLAIMANT

**UNITED PARCEL SERVICE, INC.,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
ESIS, INC.
CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MAY 24, 2023**

Hearing conducted on Wednesday, May 24, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Lance Jeffers, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable David C. Jones, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, May 24 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 Replacement).

On March 7, 2023, the respondents filed with the Commission a motion to dismiss without prejudice (MTD) requesting that this claim be dismissed for lack of prosecution. Thereafter, pursuant to the applicable law and in advance of the hearing the claimant was mailed a copy of the respondents' MTD and the subject hearing notice. The claimant failed and/or refused to respond to either the respondents' MTD or to the Commission's hearing notice, and he failed and/or refused to appear at the subject hearing.

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.

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 his claim at this time.

Therefore, after a thorough consideration of the facts, issues, the applicable law, 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 been mailed due and legal notice of both the respondents' (MTD) and the subject hearing date, time, and place, the claimant neither inquired concerning or responded to the motion in any way, and he did not appear, nor cause anyone to appear on his behalf, at the subject hearing. Therefore, the claimant is deemed to have waived his right to a hearing on the respondents' motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to request a hearing, and he has failed and/or refused to take any action(s) to prosecute his claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed April 3, 2023, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b), and Commission Rule 099.13.

This Order shall *not* be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

Lance G. Jeffers, AWCC No. H103529

If they have not already done so, the respondents hereby are ordered to 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

MP/mp