

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: G906772**

RODNEY ARMOSTER, EMPLOYEE	CLAIMANT
SAF-HOLLAND, INC., EMPLOYER	RESPONDENT
TRUMBULL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
THE HARTFORD, THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED FEBRUARY 4, 2021**

A hearing was held before Administrative Law Judge Chandra L. Black, in Jefferson County, Pine Bluff, Arkansas.

Claimant represented by Ms. Whitney James, Attorney at Law, Little Rock, Arkansas. Ms. James waived appearance at the hearing.

Respondents were represented by Mr. Michael C. Stiles, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on January 29, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Arkansas Code Annotated §11-9-702(d), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the January 29, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

### **DISCUSSION**

The Claimant sustained an admittedly compensable injury during the course and in the scope of his employment with the respondent-employer, June 15, 2019. Subsequently, on January 30, 2020, the Claimant's attorney filed with the Commission, a claim for workers' compensation benefits by way of a Form AR-C. Specifically, the Claimant alleged he was working on a piece of heavy machinery when a piece fell, and he reached to catch it, and was injured. The Claimant alleged that he sustained injuries to his left arm, left shoulder, and other whole body. This incident occurred on June 15, 2019.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on October 15, 2019, wherein they accepted compensability of the claim. The Respondents accepted this claim for a compensable "left shoulder injury". It appears that benefits were paid to and on behalf of the Claimant for his admittedly compensable left shoulder injury of June 15, 2019.

Since the filing of the Form AR-C, there has been no action on the part of the Claimant to prosecute this claim, or otherwise pursue benefits.

Therefore, on or about November 25, 2020, the Respondents filed a Respondents' Motion to Dismiss Without Prejudice, which was accompanied by a Brief in Support of Respondents' Motion to Dismiss Without Prejudice, with the Commission, along with a Certificate of Service to the Claimant's attorney.

The Commission sent a Notice to the Claimant and his attorney, on December 1, 2020, informing them of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response.

On December 17, 2020, the Claimant's attorney sent an email to the Commission, stating that the Claimant does not object to the Respondents' motion to dismiss, so long as the dismissal is without prejudice. At that time, counsel for the Claimant waived appearance at any hearing needed for the motion.

Pursuant to a Hearing Notice dated December 22, 2020, the Commission notified the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss Without Prejudice. Said hearing was scheduled for January 29, 2021, at 9:30 a.m., at the Jefferson County Courthouse, in Pine Bluff, Arkansas.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant's attorney waived appearance at the hearing. However, the Respondents appeared through their attorney.

Counsel stated that the Claimant has failed to prosecute his claim for workers' compensation benefits. Counsel noted that the Claimant's attorney has failed to respond to discovery propounded to them on April 20, 2020. He further noted that the Claimant has not attempted to prosecute, or advance his claim, since the filing of the Form AR-C, which was done over a year ago. Additionally, he advised the Commission that the Claimant's counsel does not object to the matter being dismissed without prejudice. Therefore, counsel moved that this matter be dismissed pursuant to Arkansas Code Annotated §11-9-702(d), and Commission Rule 099.13.

The aforementioned statutory provisions and Arkansas Workers' Compensation Rule are applicable in this request for dismissal of this claim, without. In that regard, they are outlined below.

Specifically, Arkansas Code Annotated §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refile of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

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)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for additional workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise attempted to prosecute his claim for workers' compensation benefits since the filing of the Form AR-C, in over a year ago; and nor has he resisted the dismissal request, if it is granted without prejudice.

Therefore, after consideration of the evidence before me, I find the Respondents' Motion to Dismiss Without Prejudice, to be well taken. Therefore, I further find that pursuant to Arkansas Code Annotated §11-9-702 (d), and Commission Rule 099.13, this claim for additional workers'

compensation benefits should be dismissed without prejudice to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

**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 Arkansas Code Annotated. §11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant sustained a compensable left shoulder injury, while performing employment duties for the respondent-employer, on June 15, 2019.
3. On January 30, 2020, the Claimant's attorney filed a Form AR-C, with the Commission, alleging an injury to his left arm, left shoulder, and other whole body.
4. The respondent-insurance-carrier filed a Form AR-2, with the Commission on October 15, 2019, accepting the claim for a compensable injury to the Claimant's left shoulder. Respondents paid some benefits to and on behalf of the Claimant for his compensable injury.
5. Since the filing of the Form AR-C, the Claimant has failed to prosecute, or otherwise advance his claim.
6. On November 25, 2020, the Respondents filed with the Commission, a Respondents' Motion to Dismiss Without Prejudice which was accompanied by a Brief in Support of Respondents' Motion to Dismiss Without Prejudice.
7. The Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by the Claimant in furtherance of his claim, as he has failed to timely prosecute this matter. the Claimant does not object to his claim being dismissed without prejudice.
8. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.
9. That Respondents' Motion to Dismiss Without Prejudice is well established. As such, said motion is granted without prejudice, to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for additional workers' compensation benefits. This dismissal is pursuant to Ark. Code Ann. §11-9-702(d), and Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified under the Act.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**

clb/bh