

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H407416**

**CARL E. AVERY,
EMPLOYEE**

CLAIMANT

**DUMP IT DUMPSTER RENTAL LLC.,
EMPLOYER**

RESPONDENT

**ACCIDENT FUND INS. CO. of AMERICA,
CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 27, 2025

Hearing conducted on Wednesday, July 30, 2025, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Mr. Carl E. Avery, *Pro Se*, of Stuttgart, Arkansas.

The Respondents were represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by Respondents on May 14, 2025. A hearing on the motion was conducted on July 30, 2025, in Little Rock, Arkansas. Claimant, according to Commission file is *Pro Se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as a driver. The date for Claimant's alleged injury was on September 3, 2024. He reported his injury to Respondent/Employer on October 30, 2024. Respondents admitted into the record Respondents' Exhibit 1, pleadings, and correspondence, consisting of 8 pages. The Commission has admitted into evidence Commission Ex. 1, pleadings, correspondence, and U.S. Mail return receipts, consisting of 10 pages, *as discussed infra*.

The record reflects on November 13, 2024, a Form AR-C was filed with the Commission by Claimant's then-counsel, Mark Peoples, purporting that Claimant sustained work-related injuries to his back and neck. On November 14, 2024, a Form AR-1 was filed with the Commission purporting that Claimant pulled back muscles changing a tire. On November 25, 2024, a Form AR-2 was filed by Respondents neither accepting nor denying compensability. However, Respondents' counsel confirms during the motion to dismiss hearing that compensability was accepted, and benefits were provided. Claimant was released from treatment with no restrictions in January 2025. Claimant next filed for a change of physician on January 3, 2025. Claimant's then-counsel withdrew that request for a change of physician on March 17, 2025. On that same day, Claimant's counsel filed a motion to withdraw as counsel. The Full Commission granted the motion on April 23, 2025.

On May 14, 2025, Respondents' counsel filed a Motion to Dismiss due to Claimant's failure to prosecute his claim. The Claimant was sent, on May 19, 2025, notice of the Motion to Dismiss, via certified and regular U.S. Mail, to his last known address. The certified motion notice was not claimed by Claimant as noted on the June 3, 2025, return receipt. This notice sent regular U.S. Mail did not return to the Commission. The Claimant did not respond to the Motion, in writing, as required. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of Respondents' Motion to Dismiss hearing date at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail, on June 24, 2025. The certified notice was not claimed as noted by the July 10, 2025, return receipt. The hearing notice sent regular First-Class was not returned to the Commission. The hearing took place on July 30, 2025. And as mentioned before, the Claimant did not show up to the hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, 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 Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the July 30, 2025, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under 11 C.A.R. § 25-110 (formerly AWCC Rule 099.13.)
- 4.
5. The Respondents' Motion to Dismiss should be granted.
6. This claim is hereby dismissed without prejudice.

III. DISCUSSION

11 C.A.R. § 25-110 provides:

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.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

Consistent with 11 C.A.R. § 25-110, the Commission scheduled and conducted a hearing, with reasonable notice, on the Respondents' Motion to Dismiss. The certified hearing notice was not claimed by Claimant, per the return postal notice bearing the July 10, 2025, date. However, the hearing notice sent regular First-Class mail was not returned to the Commission. The Claimant

is responsible for updating his address with the Commission. Thus, I find by the preponderance of the evidence that reasonable notice was given to the Claimant.

Furthermore, 11 C.A.R. § 25-110 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed his Form AR-C on November 13, 2024. Since then, he has failed to request a bona fide hearing. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim by failing to request a hearing. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted, and Claimant's claim is dismissed *without prejudice*.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge