

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
AWCC CLAIM NO.: H010435**

ELZIE L. BASS, Employee	CLAIMANT
GARY CARPENTER CONSTRUCTION, INC., Employer	RESPONDENT
FEDERATED MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

**OPINION AND ORDER FILED DECEMBER 30, 2021**

Hearing conducted before Administrative Law Judge Terry Don Lucy, in Pulaski County, Arkansas.

Counsel for the Claimant: *pro se*.

Counsel for the Respondents: Honorable Eric Newkirk and David C. Jones; Attorneys at Law, Little Rock, Arkansas.

The above-captioned matter came on for a hearing on December 14, 2021, with respect to the Respondents' Motion to Dismiss filed with the Commission on October 19, 2021. When the hall was sounded at the appointed time for the hearing, the Claimant was not present for such, nor did he appear during the ensuing proceedings. Mr. Jones appeared on behalf of the Respondents.

Respondents' Exhibit Nos. 1 and 2 were subsequently introduced into the record without objection, and the Commission's file in this matter was deemed incorporated by reference into the record without objection for purposes of this Opinion and Order. (TR 5-6)

The Commission's file reflects that notice of the Respondents' Motion was sent to the Claimant via certified and first-class mail from the Commission dated October 18, 2021, to his last known address and that notice of the hearing was likewise sent to the Claimant via certified and first-class mail from the Commission dated November 16, 2021, to the same last known address. The Commission's file further reflects that the Claimant contacted the Commission's Legal Advisor Division by telephone on October 20, 2021, and expressly stated that he did not

want to pursue his claim. Obviously, such communication reflects that the Claimant received notice of the Respondents' Motion. In addition, based on records provided by the United States Postal Service, it is apparent from the Commission's file that the hearing notice was successfully delivered to the Claimant at his last known address on November 17, 2021. (See also TR 6-8)

Neither the Commission's file nor the Respondents' Exhibits suggest any response by the Claimant with respect to the pending Motion to Dismiss other than his above-noted contact with the Commission's Legal Advisor Division on October 20, 2021. As discussed on the record, there has been no Form AR-C filing in this matter and no formal hearing request; however, the Respondents filed their motion out of an abundance of caution with respect to certain actions taken on the Claimant's behalf in mid-June, 2021, inclusive of discovery propounded to the Respondents, which the latter felt could be interpreted as a hearing request at a future point in time. (TR 8-14; see also RX 2 at 7-12)

Given the Claimant's lack of objection to the Respondents' Motion, corresponding failure to appear at the hearing held on December 14, 2021, express desire to not pursue the present matter, and apparent failure to request a hearing on the merits of this matter at any time since the date of the alleged injury of December 5, 2020, I specifically find that the Claimant has failed to prosecute the present matter in a timely manner and that, to the extent that actions taken on his behalf may be construed as a statutory claim for benefits, dismissal thereof without prejudice is warranted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, for lack of timely prosecution, and hereby grant the Respondents' Motion.

The above-captioned matter is respectfully dismissed without prejudice effective December 14, 2021, and the Respondents are ordered and directed to pay the court reporter's fee within thirty days of billing for such.

IT IS SO ORDERED.

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TERRY DON LUCY  
Administrative Law Judge