

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H108400

DONALD BEERS, EMPLOYEE	CLAIMANT
DIVERSIFIED CONSTRUCTION COMPANY, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INS. CO, INSURNACE CARRIER	RESPONDENT
SUMMIT CONSULTING, LLC, THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED MAY 12, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing for the hearing.

Respondents represented by the Honorable Jason Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on April 13, 2022 in the above-referenced claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). The sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by law.

The record consists of the transcript of the April 13, 2022 hearing. Also, the entire Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the dismissal hearing.

### **Procedural History**

The Claimant filed a Form AR-C with the Commission on October 18, 2021 for Arkansas workers' compensation benefits. It appears that the Claimant alleged injuries to his throat, eyes, nose, and sinuses due to inhalation of fumes, while working for the respondent-employer. The date of the Claimant's alleged accident was May 4, 2021. Per this document, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits.

On or about October 21, 2021, the Respondents filed a Form AR-2 with the Commission denying this as a compensable claim. Specifically, they stated: "Full Denial [sic]. No compensable accident. Does not meet statutory definition of accident. He is Not[sic] an Employee [sic] of the insured." However, the claims adjuster marked the box on this form, which states that this is a medical only claim.

Nevertheless, since the filing of the Form AR-C over seven months ago, there has been no action whatsoever taken by the Claimant to pursue his claim for workers' compensation benefits.

Therefore, on March 3, 2022, the Respondents filed with the Commission a Respondents' Motion to Dismiss, with a certificate of service to the Claimant by way of depositing a copy of the foregoing pleading in the United States Mail and/or having faxed the document to him.

On March 7, 2022, the Commission sent a notice to the Claimant notifying him of the Respondents' motion to dismiss, with a deadline of March 28, 2022 for filing a written objection to the motion.

There was no response from the Claimant regarding this correspondence.

On March 29, 2022, a Notice of Hearing was mailed to the parties letting them know that a dismissal hearing was scheduled for April 13, 2022 on the Respondents' motion to dismiss.

Information received by the Commission from the United States Postal Service shows that both of the above notices were delivered to the Claimant's home. In each instance, the proof of delivery for each item bears the signature of the Claimant.

Still, there was no response from the Claimant.

A hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing. However, counsel for the Respondents appeared at the hearing to address his motion. During the hearing, counsel for the Respondents simply asked that this claim be dismissed without prejudice pursuant to the law and rules because there has been no effort made by the Claimant to prosecute his claim since the filing of the Form AR-C in October 2021. Counsel further noted that the Claimant has received notice of the motion.

### **Discussion**

The applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (a)(4) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Similarly, Commission Rule 099.13 provides, in relevant part:

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)

My review of the evidence shows that the Claimant has not requested a hearing within more than six months after the filing of his claim (the Form AR-C was filed October 2021) for workers' compensation benefits. Hence, no effort whatsoever has been made by the Claimant to prosecute or resolve his claim.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim should be granted under the provisions of Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13. Said dismissal is without prejudice, to the refiling of this claim within the limitation period specified by law.

#### **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 Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The parties were provided reasonable notice of the motion to dismiss and the hearing thereon.
3. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is well founded.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed under Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13 without prejudice, to the refiling of it within the limitation period specified by law.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**