

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H208127**

RAY C. BRANCH, EMPLOYEE	CLAIMANT
PULASKI COUNTY SPECIAL SCHOOL DISTRICT/PCSSD, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN. WCT, INSURANCE CARRIER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN, THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED JUNE 21, 2023**

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

Claimant, pro se, failed to appear for the hearing.

Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on June 20, 2023 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 Ark. Code Ann. §11-9-702 (d) (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the June 20, 2023, hearing and the documents contained therein. Also, the entire Commission's file has been made a part of the record. It is

hereby incorporated herein by reference. The Respondents’ Hearing Exhibit Packet consisting of thirty-one numbered pages was marked as Respondents’ Exhibit 1.

**Discussion**

On November 16, 2022, the Claimant filed with the Commission a claim for Arkansas workers’ compensation benefits by way of a Form AR-C. Specifically, the Claimant alleged that he sustained injuries to his back and left side, on October 6, 2022. The Claimant checked some the boxes for initial workers’ compensation benefits in the form of, temporary partial disability, rehabilitation and medical expenses. Also, on this form, the Claimant specifically made a handwritten request for back checks for being off over a month.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on November 17, 2022, wherein they denied compensability on the grounds of “incomplete investigation.”

On December 1, 2022, the claim was sent to the Legal Advisors’ Division for mediation. The attempt to set up medication failed. Therefore, on December 13, 2022, the claim was transferred to the Clerk’s Office for reassignment to an Administrative Law Judge for adjudication.

The claim was transferred to me for a hearing on the merits. On December 16, 2022, Prehearing Questionnaires and Preliminary Notices were mailed to the parties with deadlines for filing timely responses.

The Claimant failed to file a timely response. Therefore, the claim was returned to the Commission’s general files on January 17, 2023.

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

On March 10, 2023, the Respondents filed with the Commission a letter-motion requesting that the claim be dismissed for a lack of prosecution. The Respondents notified the Claimant of their motion for dismissal by way of mailing a copy of to him.

The Commission sent a letter-notice to the Claimant's last known address on March 20, 2023. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents' motion.

Information received by the Commission from the United States Postal Service indicates that they were unable to locate any delivery information on this item in their records.

Yet, there was no response from the Claimant.

Therefore, pursuant to a Hearing Notice dated May 18, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for June 20, 2023, at 10:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

However, on June 3, 2023, the United States Postal Service informed the Commission that they were unable to locate any delivery information on the above item. Of significance, the Claimant contacted the Commission June 16, 2023, to objected to his claim being dismissed. Specifically, he wrote, "I Ray Branch, Jr. [the Claimant] .... I do not have an attorney to represent me so I need a cancellation on the court day until I finish with my rehab and my second specialist and then my MRI and then I will be ready. Sorry for the inconvenience." The Claimant was informed that the hearing would remain on the docket as scheduled, with his objection and comments being noted.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the hearing and his message was given full consideration. Nevertheless, the Respondents appeared through their attorney.

Counsel noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. Counsel further noted that there has been no attempt on the part of the Claimant to move forward with a hearing. Explicitly, counsel for the Respondents noted that the Claimant did not respond in a prompt fashion during the prehearing process and his discovery. Moreover, he pointed out that the Claimant failed to respond to the notices of this Commission until his email of June 16, 2023, just four days prior to the scheduled hearing and nor did the Claimant appear at the hearing to object to the dismissal of his claim. Therefore, counsel moved that this claim be dismissed under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13 without prejudice.

The record before me proves that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. The Claimant's objection to the dismissal has been taken into full consideration. However, if the Claimant intends to pursue his claim as indicated, he has sufficient time to refile his claim with the Commission before the statute of limitations has run on it. Therefore, per Rule 099.13 of this Commission, I find that this claim is hereby dismissed, without prejudice to the refiling of it with the limitation period specified by law. Considering the foregoing finding, consideration for dismissal of the within claim under the provisions of Ark. Code Ann. §11-9-702, has been rendered moot.

**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 Respondents filed with the Commission, letter-motion to dismiss this claim for which a hearing was held.
3. The evidence preponderates that the Claimant failed to timely prosecute his claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss is hereby granted without prejudice pursuant to Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Workers' Compensation 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**