

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H201469**

**MICHAEL E. BROWN,
EMPLOYEE**

CLAIMANT

**DEWAFELBAKKERS, LLC,
EMPLOYER**

RESPONDENT

**CHUBB INDEMNITY INS. CO./CHUBB GROUP
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED OCTOBER 14, 2022**

Hearing conducted on Wednesday, October 12, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Michael E. Brown, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Rick Behring, Jr., Mayton, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, October 12, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.). The respondents filed a motion to dismiss and brief in support thereof with the Commission on August 24, 2022, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of both the respondents' motion to dismiss, as well as a copy of the hearing notice at his current addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested. Thereafter, the claimant never responded to the motion, nor did he contact either the

Commission or the respondents via telephone, email, USPS, or in any other manner. The claimant failed and/or refused to appear at the hearing.

The claimant filed a Form AR-C with the Commission on February 17, 2022, but he did not check any of the boxes on the Form AR-C. At the bottom of the Form AR-C, someone has written: “(For Change of Physician).” Thereafter, neither the claimant nor anyone acting on his behalf contacted the Commission concerning the apparent change of physician (COP) request. By letter dated May 13, 2022, Susan Isaac, a registered nurse (RN) with the Commission’s Medical Cost Containment Division, following up with the claimant’s apparent COP request. The evidence of record reveals the respondents handled this claim as a “medical only” claim.

In her letter, Ms. Isaac advised the Commission she had called him and left voicemails “multiple times” to follow-up concerning his apparent COP request; that she had been unable to contact him; and she advised him that unless she heard from him within ten (10) business days, the Commission would assume he no longer wanted a COP and she would return his file to the Commission’s open general files. When she never heard from the claimant, Ms. Isaac did in fact return the claimant’s file to the Commission’s open general files. Thereafter, the respondents filed the subject motion to dismiss. The Commission’s file and all the evidence of record conclusively demonstrates the claimant has never requested a hearing in this claim. Neither has he taken any actions whatsoever to prosecute his claim.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission’s entire file in this matter, by reference.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has neither requested a hearing made an informed decision not to pursue this claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having received due and legal notice of the respondents' motion to dismiss, as well as due and legal notice of the subject hearing, the claimant failed and/or refused to respond, or to contact the Commission in any way. Moreover, the claimant failed and/or refused to appear at the hearing. Therefore, the claimant hereby is deemed to have waived his right to a hearing on the respondents' motion to dismiss.
3. The claimant has failed and/or refused to ever file a hearing request in this claim, and he has failed and/or refused to take any action(s) whatsoever to prosecute the claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on August 24, 2022, should be and hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf from refiling the

claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp