

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H205851

GERALD A. BRUCKER, EMPLOYEE

CLAIMANT

DREDGIT CORPORATION, EMPLOYER

RESPONDENT

**COMMERCE AND INDUSTRY / AIG,
INSURANCE CARRIER / TPA**

RESPONDENT

OPINION FILED APRIL 9, 2024

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas on March 13, 2024.

Claimant is *pro se* and appeared along with his wife.

Respondents are represented by Mr. Jarrod S. Parrish, Attorney-at-Law of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on March 13, 2024, in Little Rock, Arkansas, on respondents' Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant was *pro se* and appeared along with his wife. The claimant contended that he was injured in an incident on or about October 8, 2022, and filed a Form AR-C, a little under a year later, on October 8, 2022. The respondents filed an AR-2 denying the claim based upon the lack of an employment relationship among other things. The prehearing material was sent to the parties on or about April 11, 2023. The claimant responded by May 4, 2023, stating that he wanted to stop the process and indicating that he did not want to go forward. Consequently, a Motion to Dismiss was filed on June 19, 2023, by the respondents. Claimant then wrote a letter on July 19, 2023, requesting a hearing, and at that time the Motion to Dismiss was held in abeyance. The Claimant eventually made a prehearing filing and a prehearing conference was held by phone and a hearing was set for January 16 of 2024. Six

(6) days prior to the hearing, the claimant wrote indicating that he wanted to drop his claim. Dismissal Interrogatories were forwarded to the claimant, which were never returned and consequently this matter was set for a hearing on respondents' Motion to Dismiss

The respondents contend that twenty-nine (29) months have now passed and the claimant has not gotten the matter to a hearing. Further, the respondents contend that the claimant worked under a contract with Respondent, Dredgit, which designates the claimant's LLC as an independent contractor and that payment to the claimant came from his own personal LLC, and that consequently, the matter should be dismissed.

The claimant contended at the time of the hearing to dismiss that he is working with the IRS to make a determination if he was an independent contractor or an employee. Further, he stated that he had two (2) employees and he needed to figure out how to do depositions. He also contended that he had spent over one hundred (100) hours talking to attorneys in regard to representation about this matter, only to be told they did not want to represent him.

The Motion to Dismiss was filed on or about June 19, 2023, requesting that the matter be dismissed for failure to prosecute pursuant to Arkansas Code Annotated §11-9-702(a)(4) and Rule 099.13. The claimant was advised that under Arkansas law, an attorney representing him in regard to his Workers' Compensation claim was required to have his fee approved. Further, he was instructed that he could contact the Arkansas Bar Association to obtain a list of attorneys that handled workers' compensation cases. The claimant was further advised that this matter would be taken under advisement until April 15, 2024, a day easy to remember due to it being tax-day, and if he had taken no affirmative action by that time, there was a good chance the matter would be dismissed. On April 5, 2024, the claimant sent an email which appeared to state that the claimant was still attempting to pursue his claim without the help of counsel, which he is entitled to do.

Consequently, there is no alternative but to determine that the claimant has in fact taken affirmative steps to pursue his claim. Consequently, this matter will be promptly set for a pretrial hearing, and the Motion to Dismiss will again be held in abeyance. All parties are put on notice that no continuances will be granted unless there are exceptional circumstances presented to the Commission.

Consequently, after a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the respondent and statements by the claimant, and after the matter being taken under advisement for thirty (30) days with the claimant now determined to have taken affirmative steps to pursue his claim by the sending of an email on April 4, 2024, there is no alternative but to find that the Motion to Dismiss will again be held in abeyance and this matter will be set for a prompt prehearing telephone conference.

ORDER

Pursuant to the above statement of the case, there is no alternative but to find that the Motion to Dismiss is again taken under abeyance, and the matter will be set for a prompt prehearing telephone conference in order to pursue the claimant's claim for benefits.

IT IS SO ORDERED.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE