

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC CLAIM NO.: H104141**

SHANNON BURCH, Employee	CLAIMANT
DUKE CUSTOM CABINETS, INC., Employer	RESPONDENT
TECHNOLOGY INSURANCE COMPANY, Carrier	RESPONDENT
AMTRUST NORTH AMERICA, TPA	RESPONDENT

OPINION AND ORDER FILED JANUARY 25, 2022

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

Counsel for the Claimant: *pro se*.

Counsel for the Respondents: Honorable William C. Frye; Attorney at Law, Little Rock, Arkansas.

The above-captioned matter came on for a hearing on January 20, 2022, with respect to the Respondents' Motion to Dismiss filed with the Commission on November 16, 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. The Respondents appeared through their counsel, the Honorable William C. Frye. During the proceedings, 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 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 November 18, 2021, to his last known address, and allowed him until December 8, 2021, to respond to such. The Commission's file also reflects, in the form of records obtained from the United States' Postal Service, that the Claimant received such notice on November 20, 2021. However, the Commission's file reflects no response from the Claimant with respect to the Respondents'

Motion. (See also TR 6-7)

In addition, the Commission's file further reflects that notice of the hearing was likewise sent to the Claimant via certified and first-class mail from the Commission dated December 13, 2021, to the same last known address. Once again, the Commission's file indicates that the Claimant received such notice on December 15, 2021, by virtue of records obtained from the United States' Postal Service. (*Id.*)

As discussed on the record, there has been no Form AR-C filing in this matter and no formal hearing request to date; however, the Respondents filed their motion out of an abundance of caution with respect to certain actions taken on the Claimant's behalf subsequent to the date of the alleged injury of April 20, 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 at 7-11) Moreover, such actions prompted the Respondents to propound their own written discovery and to procure the Claimant's deposition on August 18, 2021. (*Id.*) According to the Commission's file, following such activities, the Claimant's previous Counsel was allowed to withdraw from representation by virtue of an Order entered by the Full Commission on September 27, 2021. (See also TR 8-9)

Given the Claimant's lack of response or objection to the Respondents' Motion, corresponding failure to appear at the hearing held on January 20, 2022, and apparent failure to request a hearing on the merits of this matter at any time since the date of the alleged injury of April 20, 2021, 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 thus far may be construed as a statutory claim for benefits, dismissal thereof without prejudice is warranted pursuant to Commission Rule 099.13, for lack of timely prosecution, and hereby grant the Respondents'

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Motion.

The above-captioned matter is respectfully dismissed without prejudice effective January 20, 2022, 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.

TERRY DON LUCY
Administrative Law Judge