

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H201776**

**JAMES BRAUDRICK,
EMPLOYEE**

CLAIMANT

**CAL ARK INTERNATIONAL INC.,
SELF-INSURED/EMPLOYER**

RESPONDENT

**CCMSI,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED MAY 17, 2024

Hearing conducted on Wednesday, April 16, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Mr. James Braudrick, *pro se*, of Comanche, Oklahoma, did not appear in person at the hearing.

The Respondents were represented by the Honorable Guy Wade, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on April 16, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Admitted into evidence was Respondent Exhibit 1, pleadings, correspondence, and Motion to Dismiss hearing notice, consisting of nine pages, Commission Exhibit 1, pleadings, correspondence, and Certified U.S. Mail return receipts, consisting of eight pages. I have also blue-backed Forms AR-1, AR-2, and AR-C, *as discussed infra*.

The record reflects on March 1, 2022, a Form AR-1 was filed in this case, reflecting that Claimant purportedly fell while walking on February 15, 2022. Whether he was walking for a work-related purpose when he fell or what caused his fall is unclear from the evidentiary record.

Nevertheless, the Claimant reported his injuries to the Respondent/Employer the same day. Respondents filed a Form AR-2 on March 2, 2022, representing that the claim was controverted but they would pay for the authorized Concentra medical bills. The Claimant filed a Form AR-C through his then-attorney Mark Peoples on June 23, 2023, setting out his injuries. There he alleged he sustained injuries to multiple body parts including ribs, elbow, knee, neck, and shoulder when he fell. Respondents' attorney Guy Wade entered his appearance on July 6, 2023.

Attorney Peoples, on September 5, 2023, filed a Motion for Leave to Withdraw as Counsel, citing "differences of opinion regarding the prosecution of the claim" as the reason for the motion. The Motion was granted on September 13, 2023.

The Respondents next filed a Motion to Dismiss on February 14, 2024, requesting this claim be dismissed for lack of prosecution. The Motion further stated that the "claimant has done nothing to pursue this matter and has failed to even request any benefits." The Claimant was sent certified notice of the Motion to Dismiss from the Commission on February 15, 2024. The Claimant received that notice on February 20, 2024, when it was left with him at his last known address. The Claimant had twenty days to respond to the Motion to Dismiss. The Claimant did not respond to the Motion to Dismiss in writing. In accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of both the Respondents' Motion to Dismiss and the hearing notice at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was returned without being served, but the regular First-Class mail notice was not returned. The hearing took place on April 16, 2024. As previously mentioned, the Claimant did not show up to the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the April 16, 2024, hearing.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Commission Exhibit 1 provides multiple Certified U.S. Mail Return Receipts. One receipt dated March 28, 2024, was not claimed by the Claimant. This receipt would have established that the Motion to Dismiss Hearing notice was served on the Claimant. However, the same notice was also sent to the Claimant's address of record by First-Class U.S. Mail on March 13, 2024, and did not return to the Commission. The Claimant is responsible for providing the Commission with his current address. Moreover, on February 20, 2024, twenty-two days before the hearing notice was sent out, the Claimant was directly served with notice of the Motion to Dismiss. That motion was served at the same address of record. Therefore, there is no reason for me to believe the Claimant did not receive the notice of the Motion to Dismiss hearing date via First-Class U.S. Mail. The Respondents' counsel

appeared at the hearing and argued his motion. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed his Form AR-C on June 23, 2023, and since then has taken no action in furtherance of this claim. When notice of the Motion to Dismiss was received by him on February 20, 2024, he failed to respond to the Motion by objecting and requesting a hearing in writing. In this regard, the Claimant has failed to do the bare minimum in prosecuting his claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim by failing to request a hearing. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is granted, *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge