

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G900427**

**JOHN E. CAMP,
EMPLOYEE**

CLAIMANT

**KRISPY KREME LITTLE ROCK,
EMPLOYER**

RESPONDENT NO. 1

**LIBERTY INS. CORP./
LIBERTY MUTUAL GROUP,
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

**STATE OF ARKANSAS, DEATH & PERMANENT
TOTAL DISABILITY TRUST FUND**

RESPONDENT NO. 2

**OPINION AND ORDER FILED SEPTEMBER 22, 2021, DENYING RESPONDENT NO.
1'S MOTION TO DISMISS WITHOUT PREJUDICE FILED WITH THE COMMISSION
ON APRIL 12, 2021; AND NUNC PRO TUNC ORDER**

Hearing conducted on Wednesday, September 22, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, John E. Camp, pro se, of Bryant, Saline County, Arkansas, appeared pro se.

Respondent No. 1 was represented by the Honorable Michael E. Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable Christy L. King, waived appearance at the hearing.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, September 22, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Repl.). A hearing also was held in this claim for this same purpose on Monday, May 17, 2021. By an opinion and order filed and entered of record on May 18, 2021 (the filed order incorrectly states the date of the order as "May 18, 2020"), the ALJ held Respondent No. 1's motion to dismiss in abeyance, and granted

the claimant's request to give him an additional 45 days to try to locate and retain an attorney to represent him in this matter. (Commission's Exhibit 1).

By handwritten letter dated July 12, 2021, addressed to the ALJ's administrative assistant, Ms. Sandra Nichols, the claimant advised he had been unable to find and retain counsel to represent him in this claim. He further advised he wished to proceed to a hearing pro so. (Comms'n Ex. 2). Thereafter, this hearing was scheduled to provide the parties the opportunity to make a record, and to address and resolve Respondent No. 1's outstanding motion to dismiss filed with the Commission on April 12, 2021, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was once again mailed due and proper legal notice of Respondent No. 1's motion to dismiss, as well as a copy of the hearing notice for this, the second hearing on Respondent No. 1's motion to dismiss without prejudice filed April 12, 2021, at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested.

This claim was the subject of a prior motion to dismiss, which ALJ (now Chief ALJ) O. Milton Fine granted by order filed December 30, 2019. Thereafter, the claimant retained counsel, Ms. Whitney James/Ms. Laura Beth York of the Rainwater, Holt & Sexton law firm (the Rainwater firm), who re-filed the claim via a Form AR-C filed with the Commission on January 7, 2020. By letter dated March 4, 2021, Ms. Laura Beth York requested leave to withdraw as claimant's counsel, which the ALJ granted by letter to both parties dated March 17, 2021.

Thereafter, Respondent No. 1 filed the subject motion to dismiss without prejudice with the Commission on April 12, 2021. The claimant objected to the motion, first via a handwritten letter filed with the Commission on May 4, 2021 and, second, in person at the May 17, 2021, hearing.

As mentioned above, at the May 4, 2021, hearing the claimant explained he intended to pursue his claim, but he required additional time to retain counsel. He also expressed the desire and intention to visit with a Commission legal advisor, which he intended to do immediately after the conclusion of the May 17, 2021, hearing. At the subject September 22, 2021, hearing, the claimant once again stated, as he had done in his July 12, 2021, letter to the ALJ's administrative assistant, that he had been unable to find an attorney who was willing to represent him, so he wished to proceed to a hearing pro se. In the meantime, he intended to continue to attempt to retain counsel, which the ALJ strongly encouraged him to do.

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.

DISCUSSION

RESPONDENT NO. 1'S MOTION TO DISMISS

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 Respondent No. 1's motion to dismiss. As explained in more detail in the "STATEMENT OF THE CASE" section, *supra*, the claimant stated on the record as follows: he objects to the dismissal of his claim without prejudice; he requests a hearing; and he intends to proceed pro se if he cannot retain counsel. Therefore, Respondent No. 1's motion to dismiss is respectfully denied, and this matter will proceed to a hearing at the parties' earliest possible convenience.

NUNC PRO TUNC

Moreover, I find a clerical error(s) exist(s) in the Opinion and Order filed May 18, 2021, in this claim. On Page 1, the title of the May 18, 2021, opinion and order incorrectly states it was filed “May 18, 2020.” The subject opinion and order was, of course, filed on May 18, 2021, and *not* on May 18, 2020.

Ark. Code Ann. §11-9-713(d) (2020 Lexis Replacement) authorizes me to correct clerical errors in such circumstances. This is a proper case for the exercise of that authority. Therefore, the Opinion and Order Filed May 18, 2021, which reflects it was filed on “May 18, 2020,” hereby is modified and amended *only* to correct the aforementioned inadvertent clerical error(s)/omission(s) on Page 1. And anywhere else it may appear in the opinion and order. In all other respects – including but not limited to the “**FINDINGS OF FACT AND CONCLUSIONS OF LAW**” section - the Opinion and Order filed May 18, 2021 shall remain the same, and shall not otherwise be altered, amended, or affected in any way.

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 been granted an additional 45 days to attempt to locate and retain counsel to represent him in this claim; and after having had the opportunity to visit with a Commission legal advisor, the claimant was unable to retain an attorney who was willing to represent him in this matter, and he wishes to proceed to a hearing pro se.
3. Therefore, Respondent No. 1’s motion to dismiss without prejudice filed with the Commission on April 12, 2021, is, at this time, hereby denied and dismissed without prejudice.

4. Once again, the claimant is advised he will be held to the same legal and professional standards as the licensed attorneys involved in this claim.
5. **MOREOVER, AND ONCE AGAIN, THE CLAIMANT IS STRONGLY ENCOURAGED TO LOCATE AND RETAIN LEGAL COUNSEL TO REPRESENT HIM IN THIS MATTER. HOWEVER, SINCE HE HAS BEEN ALLOWED MORE THAN ADEQUATE TIME TO RETAIN LEGAL COUNSEL, THE ALJ WILL NOT GRANT THE CLAIMANT ANY ADDITIONAL TIME TO DO SO. NEITHER THE PREHEARING NOR THE HEARING PROCESS WILL BE DELAYED ANY FURTHER, EXCEPT FOR GOOD CAUSE SHOWN, OR TO PREVENT MANIFEST INJUSTICE.**
6. The Commission/ALJ's office shall enforce the prehearing process, which commenced on or about July 14, 2021; and, upon receipt of the parties' prehearing questionnaire responses, schedule a prehearing teleconference at the parties' mutual convenience.
7. Finally, pursuant to *Ark. Code Ann.* Section 11-9-713(d), the May 18, 2021, opinion and order referenced above that inadvertently and inaccurately states it was filed on "May 18, 2020", hereby is amended to reflect it was actually filed on May 18, 2021.

Respondent No. 1 shall pay the court reporter's invoice within 20 days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

**Opinion and Order Denying Respondent
No. 1's Motion To Dismiss Without
Prejudice; and *Nunc Pro Tunc* Order
Entered:
September 22, 2021**

MP/mp