

**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

ORDER OF DISMISSAL WITHOUT PREJUDICE FILED JANUARY 5, 2022

Prehearing conference scheduled Tuesday, January 4, 2022.

The claimant, John E. Camp, pro se, Bryant, Saline County, Arkansas, failed and/or refused to make himself available for, or to participate in, the prehearing teleconference.

Respondent No. 1 was represented by the Honorable Zachary 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 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 was represented by 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, and 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 of visiting 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.

After both parties prepared and filed their prehearing responses, the ALJ's office scheduled a prehearing teleconference in this claim for Tuesday, January 4, 2022, at 10 a.m. The claimant received due and legal notice of this prehearing teleconference. Without any prior notice to either the ALJ's office or the respondents, after repeated attempts to call him at his telephone number of record, the claimant failed and/or refused to make himself available for and to participate in the prehearing teleconference.

The claimant's failure and/or refusal to participate in the January 4, 2022, 10 a.m., prehearing teleconference provides – in addition to the evidence reflected in the prior transcripts and the Commission's entire file – demonstrates by a preponderance of the evidence that he has failed and/or refused to prosecute his claim. Therefore, based on both the Commission's own initiative as well as Respondent No. 1's renewal of their multiple requests for dismissal, I am compelled to dismiss this claim for lack of prosecution, both pursuant to the applicable statute and rule. The Commission has given the claimant more than adequate time, and its Legal Division has on more than one (1) occasion, provided the claimant appropriate and accurate assistance within its mandate, to move this matter toward a hearing. Still, the claimant has repeatedly failed to take the necessary actions so that this claim may timely prosecuted and set for a hearing on the merits.

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

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 hearings on Respondent No. 1's motions to dismiss.

After a thorough consideration of the facts, issues, the applicable law, the totality of the evidence contained in the Commission's entire file of this matter, 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. The first administrative law judge (ALJ) to whom this claim was assigned granted Respondent No. 1's motion to dismiss without prejudice. The claim was refiled. After two (2) separate hearings on additional motions to dismiss Respondent No. 1 filed, the claimant was granted additional time to retain an attorney. When he was unable to find a lawyer willing to take his case, the claimant decided to proceed pro se. The prehearing process was initiated, and a prehearing conference was scheduled for Tuesday, January 4, 2022. The claimant received due and legal notice of this prehearing conference. However, after having been called at his mobile number of record at least three (3) times in order to solicit and elicit his participation in the prehearing teleconference, with voicemails having been left for the claimant after at least two (2) these calls, still the claimant failed and/or refused to make himself available for and to participate in the duly and legally scheduled and noticed prehearing teleconference.
3. As the Commission's file in this claim conclusively demonstrates, the Commission has been extremely patient with the claimant, and has given him more than ample opportunity to prosecute his claim. Despite all of these multiple opportunities, including but not limited to access to the patient, diligent, knowledgeable, professional assistance of the Commission's Legal Advisors, the claimant has been dilatory and demonstrated a lack of effort and interest in pursuing his claim. After having been warned on multiple occasions the applicable law requires the Commission to hold him to the same standards to which it must hold licensed attorneys, the claimant – after having been given multiple hearings on Respondent No. 1's motions to dismiss, as well as due and legal notice of the prehearing conference of Tuesday, January 4, 2022, even though both Respondent Nos. 1 and 2 were available for and ready to participate in the prehearing teleconference, the claimant cannot be heard to now say he somehow did not know about the call and,

therefore, was not available to participate in it. The claimant has offered a number of excuses, and even a couple of reasons, for his dilatory behavior in the past; however, the claimant's failure to make himself available for and to participate in the prehearing teleconference is inexcusable; and he has failed to show good cause for this failure and/or refusal.

4. Therefore, based on the totality of the evidence reflected in the Commission's file in this matter, in addition to the claimant's latest failure and/or refusal to make himself available for and to participate in the duly and legally scheduled and noticed prehearing teleconference – which both Respondent Nos. 1 and 2 were available for, it should be noted – all of which have resulted in a waste of not only the Commission's time and resources, but also the time and resources of Respondent Nos. 1 and 2, I am compelled to find the claimant has failed to timely and effectively prosecute his claim as the Act and Commission regulations require.
5. Therefore, pursuant to both the Commission's own initiative as well as Respondent No. 1's third request to dismiss this claim for lack of prosecution, I hereby dismiss this claim pursuant to both *Ark. Code Ann.* § 11-9-702 (2021 Lexis Repl.), and Commission Rule 099.13. This dismissal shall be without prejudice to this claim's refiling by the claimant, any attorney he may retain now or in the future, or any other person(s) authorized to and acting on the claimant's behalf, *so long as* the claim is refiled within the statute of limitations prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b) (2021 Lexis Repl.).

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp