

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H003618**

**RUSSELL CHAMBERS,
EMPLOYEE**

CLAIMANT

**DANIELL AIR & ELECTRIC, INC.,
EMPLOYER**

RESPONDENT

**ALLIED EASTERN INDEMNITY CO./
EASTERN ALLIANCE INS. CO.
INSURANCE CARRIER/TPA**

RESPONDENT

**AMENDED OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JUNE 25, 2021**

Hearing conducted on Friday, June 18, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Hot Springs, Garland County, Arkansas.

The claimant, Mr. Russell Chambers, of Hot Springs National Park, Garland County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable R. Scott Zuerker, Ledbetter, Cogbill, Arnold & Harrison, LLP, Fort Smith Sebastian County, Arkansas.

INTRODUCTION

I find a clerical error(s) exist(s) in the Opinion and Order filed June 22, 2021, in the above-styled claim. *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, I hereby file this Amended Opinion and Order today, June 25, 2021. The only change made in this amended order is to correctly reflect that the Friday, June 18, 2020, hearing was held in Hot Springs, Garland County, Arkansas, and not in Little Rock, Pulaski County, Arkansas. Otherwise, this amended opinion and order is identical to the original opinion and order filed June 22, 2021.

STATEMENT OF THE CASE

A hearing was conducted on Friday, June 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 Replacement). On May 11, 2021, the respondents filed a motion to dismiss with the Commission, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was mailed due and legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice. Thereafter, the claimant did not file a response to the respondents' motion to dismiss, nor did he appear at the subject hearing.

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

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 the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has failed and/or refused to prosecute his claim.

Therefore, 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 mailed due and legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice, the claimant failed and/or refused to either respond to the motion, or to appear at the hearing. Therefore, the claimant is deemed to have waived his appearance at the hearing.
3. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute his claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on May 11, 2021, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone else acting legally and on his behalf, from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp