

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G704992**

**LEANDRO CHILDS,
EMPLOYEE**

CLAIMANT

**MAXWELL HARDWOOD FLOORING, INC.,
EMPLOYER**

RESPONDENT NO. 1

**BRIDGEFIELD CASUALTY INS. CO./
SUMMIT CONSULTING, LLC,
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

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

RESPONDENT NO. 2

**OPINION AND ORDER FILED OCTOBER 20, 2021,
HOLDING RESPONDENT NO. 1'S MOTION TO DISMISS WITHOUT PREJUDICE IN
ABEYANCE UNTIL FRIDAY, DECEMBER 3, 2021**

Hearing conducted on Tuesday, October 19, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Leandro Childs, of Warren, Bradley County, Arkansas, appeared pro se.

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 Tuesday, October 19, 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.).

Respondent No. 1 filed a motion to dismiss without prejudice with the Commission on August 2, 2021, requesting this claim be dismissed without prejudice for lack of prosecution. (Commission Exhibit 1). In accordance with the applicable Arkansas law, the claimant was mailed

due and proper legal notice of Respondent No. 1's motion to dismiss, as well as a copy of the hearing notice at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested, which he received on October 8, 2021. (Commission Exhibit 2). The claimant, who is 83 years-old, has had his right leg amputated, so he ambulates via a wheelchair. He traveled from his home in Warren, Arkansas, in order to appear at the hearing pro se here at the Commission offices in Little Rock, Arkansas.

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. The preponderance of the credible evidence of record reveals the claimant has failed to prosecute his claim through no fault of his own; and that he is entitled to additional time to either find an attorney or determine if he wants to proceed with his claim pro se.

The claimant fell at work on July 9, 2017. Initially, he did not believe he was injured. However, the next day he began experiencing pain and other symptoms in his right leg. The claimant testified the respondent-employer told him to present himself to his family physician for diagnosis and treatment. He eventually was diagnosed with a blood clot in his right leg, which apparently in turn led to the amputation of his right leg above the knee. The claimant testified he believed Respondent No. 1 initially paid his medical expenses, and that they also paid approximately two (2) weeks of his pay and/or indemnity benefits. He did not know and could not

testify as to the exact date(s) Respondent No. 1 initially and last paid his medical and/or indemnity benefits.

The claimant filed a Form AR-C with the Commission on September 27, 2017. (Commission Exhibit 3). The Commission's file contains an amended Form AR-2 that was filed with the Commission on October 4, 2017, wherein Respondent No. 1 states their position that they intended to controvert the claim in its entirety, as they contend the claimant's blood clot does not constitute a compensable work-related injury pursuant to the Arkansas Workers' Compensation Act (the Act).

This claim was assigned to former, now retired, ALJ Elizabeth W. Hogan. The claimant was represented by Little Rock, Arkansas attorney Andy L. Caldwell. The claimant, as well as Respondents Nos. 1 and 2, all filed responses to the prehearing questionnaire. Pursuant to a prehearing order filed November 22, 2017, the claim was set for a hearing on February 9, 2018, at the Bradley County Courthouse in Warren. This hearing never took place.

On August 23, 2021, attorney Caldwell filed a second response to the prehearing questionnaire on the claimant's behalf on the issues of compensability and the claimant's entitlement to related medical and indemnity benefits. Thereafter, on September 10, 2021, attorney Caldwell filed with the Commission a motion to be relieved as the claimant's counsel. (Commission's Exhibit 4). By order filed October 5, 2021, the ALJ granted attorney Caldwell's motion. (Commission Exhibit 5).

At the subject hearing on Respondent No. 1's motion to dismiss, the claimant advised he had not been able to retain counsel following attorney Caldwell's withdrawal as his attorney. He expressed some confusion and conflicting wishes and/or opinions as to whether he wanted to try to find another attorney to represent him; to proceed pro se; or to allow the claim to be dismissed

without prejudice. In this case, based on the incomplete and inconclusive facts adduced at the motion to dismiss hearing, it appears a dismissal without prejudice more likely than not would effectively result in a dismissal of this claim with prejudice, thus denying the claimant his day in court for his alleged injury.

In light of the foregoing facts the ALJ offered the claimant an opportunity to speak with a Commission legal advisor before deciding whether he wished to pursue this claim, and strongly advised him retain counsel to represent him in this matter. Furthermore, the ALJ granted the claimant 45 days from the date of the subject hearing, or until the close of business (COB)/4:30 p.m., on Friday, December 3, 2021, to advise the Commission /ALJ in writing as to whether: (1) he has retained counsel to represent in this matter; (2) he wishes to proceed to a hearing pro se, *i.e.*, representing himself at a hearing on the merits of his claim; or (3) he wants to relinquish his claim, and does not object to Respondent No. 1's motion to dismiss, in which case the ALJ will, via a separate opinion and order, grant the motion to dismiss without the necessity of the filing of another motion, and a second hearing.

Consequently, Respondent No. 1's motion to dismiss shall be held in abeyance until COB/4:30 p.m., on Friday, December 3, 2021, or until such time before this date as the claimant may advise the Commission/ALJ in writing concerning if and how he wishes to proceed with his claim. The reason for this 45-day period is to allow the claimant sufficient time to seek legal representation, to make a fully-informed decision, and to advise the Commission/ALJ in writing concerning his intentions as to whether he wishes to proceed with his claim and, if he does wish to proceed with the claim, if he wishes to proceed pro se.

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. **The claimant is strongly encouraged to speak with a Commission legal advisor, and to seek and/or obtain the services of an attorney to represent him in this claim.**
3. The claimant hereby is granted a period of 45 days from the date of the subject hearing, or until on or before COB/4:30 p.m., on Friday, December 3, 2021, to advise the Commission/ALJ in writing as to whether: (a) he has retained counsel to represent him in this matter; (b) he wishes to proceed to a hearing pro se, *i.e.*, representing himself at a hearing on the merits of his claim; or (c) he wishes to relinquish the claim and does not object to Respondent No. 1's motion to dismiss.
4. If the claimant decides to relinquish his claim and does not object to Respondent No. 1's motion to dismiss without prejudice filed with the Commission on August 2, 2021, via a separate opinion and order the ALJ will grant the subject motion to dismiss without the necessity of Respondent No. 1 filing a new motion, and without the necessity of the ALJ/Commission holding a second hearing. Any such dismissal shall be without prejudice to this claim's refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.
5. Therefore, Respondent No. 1's motion to dismiss without prejudice shall be held in abeyance until COB/4:30 p.m., on Friday, December 3, 2021, or until such time before this date as the claimant may advise the Commission/ALJ if he wishes to proceed with the prosecution of his claim and, if so, whether he has retained counsel or intends to proceed pro se, *i.e.*, representing himself at a hearing on the merits.

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

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp