

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC NO. H008535

RODNEY DAVIS, Employee

CLAIMANT

D & C WHITE LOGISTICS, INC., Employer

RESPONDENT

**CONTINENTAL INDEMNITY CO./APPLIED UNDERWRITERS,
Carrier/TPA**

RESPONDENT

OPINION/ORDER FILED JULY 21, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant not represented by counsel and not appearing at hearing.

Respondents represented by LAURA J. PEARN, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On July 8, 2021, a hearing on respondents' Motion to Dismiss was conducted in Fort Smith, Sebastian County, Arkansas. On May 12, 2021, respondents filed a Motion to Dismiss and requested that this case be dismissed for lack of prosecution. On May 20, 2021, a hearing notice was sent to the parties setting this matter for a dismissal hearing on July 8, 2021. Notice of the hearing was sent by certified mail, return receipt requested, to the claimant. United States Post Office records indicate that the notice was delivered to the claimant at the address of record in the file on May 22, 2021, at 1:19 p.m. Despite having received notice of the hearing on respondents' Motion to Dismiss, the claimant failed to appear at the scheduled hearing.

At the hearing counsel for respondents stated that an AR-C was filed by claimant's attorney in November of 2020. An independent medical consultation was thereafter arranged, but claimant failed to appear at the scheduled appointment on December 21, 2020. On January 28, 2021, claimant's attorney

filed a Motion to Withdraw as counsel for claimant, and the Commission approved the motion by Order dated February 12, 2021. There has been no request for a hearing since the filing of the claim on November 2, 2020, and there has been no further communication from the claimant requesting that he be allowed to proceed with his claim or setting forth any objection to the Motion to Dismiss. As indicated above, claimant failed to appear at the scheduled hearing although having received certified notice of same.

After a review of the record as a whole, to include all matters properly before the Commission, and having had an opportunity to hear the statements of respondents' attorney, I find that this matter should be dismissed without prejudice for failure to prosecute pursuant to Commission Rule 099.13.

ORDER

Pursuant to the above statement of the case and Commission Rule 099.13, I have no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

If respondents have not already done so, they are directed to pay the court reporter, Veronica Lane, her fees and expenses within thirty (30) days of receipt of her invoice.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**