

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009311

BERNARD DICKERSON, EMPLOYEE	CLAIMANT
STAN EXCAVATING, INCORPORATED, EMPLOYER	RESPONDENT
WAUSAU UNDERWRITERS, INS.CO., INSURANCE CARRIER/THIRDPARTY ADMINISTRATOR(TPA)	RESPONDENT

OPINION FILED MAY 18, 2021

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, did not appear for the hearing.

Respondents were represented by Mr. Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 12, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the within claim should be dismissed for want of prosecution.

Appropriate Notice of this hearing was attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the May 12, 2021, hearing. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

## DISCUSSION

The Claimant's former attorney filed a Form AR-C with the Commission on November 18, 2020. Pursuant to the Form AR-C, the following description was provided for the Claimant's injury: "Client was training and driving a dump truck for the first time when he was changing lanes, the load of the truck shifted and caused it to roll on left. Sustained injuries to left arm, left leg, ribs, neck, back head and other whole body." The Claimant asked for both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2, with the Commission December 9, 2020, wherein they accepted compensability of the claim. However, the Respondents stated that the within claim was being accepted as a medical only claim.

It appears that the Respondents propounded interrogatories to the Claimant on January 5, 2021. The Claimant failed to respond to the Respondents' request for discovery.

On February 8, 2021, the Claimant's attorney filed a Request/Motion to Withdraw as attorney for the Claimant in this matter. The Full Commission entered an order on February 24, 2021, granting the motion for the Claimant's attorney to withdraw.

Since this time, there has been no bona fide action taken by the Claimant to prosecute his claim.

Therefore, on March 9, 2021, the Respondents' attorney filed with the Commission, a Motion to Dismiss, along with a Certificate of Service to the Claimant.

On March 11, 2021, the Commission sent a Notice to the Claimant informing him of the Respondents' motion, and a deadline of April 2, 2021 for filing a written response, with the

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Commission.

There was no response from the Claimant.

Per a Hearing Notice dated April 5, 2021, the Commission notified the parties that the matter had been set for a hearing on the Respondents' motion for dismissal of the above-captioned claim due to a lack of prosecution. Said hearing was scheduled for May 12, 2021, at 1:00 p.m., at the Arkansas Workers' Compensation Commission, at the facility in Little Rock.

The Commission requested information from the United States Postal Service for delivery of both parcels of mail/notices. Per the proof of delivery information received by the Commission from the U.S. Postal Service, as of May 11, 2021, they were unable to find any delivery information in their records for said notices.

Still, there was no response from the Claimant.

Nevertheless, a hearing was held on May 12, 2021, before the Commission on the Respondents' motion. The Claimant failed to appear at the hearing to object to the motion. However, the attorney for the Respondents appeared at the hearing. Counsel noted that there has been no activity on the claim since the Claimant's attorney withdrew on February 8, 2021. Therefore, counsel moved that this claim be dismissed pursuant to both the law and rule.

In that regard, Arkansas Commission Rule 099.13, applies in this request for dismissal of the within workers' compensation claim. It is outlined below:

Specifically, Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits. However, the Claimant has failed to do so. Hence, the Claimant has failed to request a hearing on the merits in this matter since the filing of the Form AR-C in November 2020. The Claimant has also failed to respond to the notices of this Commission, and he has not objected to the dismissal. Moreover, the Claimant did not appear at the hearing to object to the Motion to Dismiss.

Therefore, after careful consideration of the evidence presented, without giving the benefit of the doubt to either party, I find the Respondents' Motion to Dismiss to be well taken. Due to all of the foregoing reasons, I further find that pursuant Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed without prejudice to the refiling within the specified limitation period.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On or about November 18, 2020, the Claimant's former attorney filed with the Commission a Form AR-C for workers' compensation benefits on behalf of the Claimant due to multiple injuries to various parts of his body.
3. Subsequently, on December 9, 2020, the Respondents filed a Form AR-2, with the Commission wherein they accepted the claim as a medical only claim.
4. On February 8, 2021, the Claimant's former attorney filed with the Commission a motion to withdraw from this matter.
5. Since this time, the Claimant has taken no identifiable action of record to prosecute his claim for workers' compensation benefits.
6. On March 9, 2021, the Respondents filed with the Commission, a Motion to Dismiss.
7. The Commission attempted to give the Claimant notice of the motion and of the hearing, in the manner prescribed by law; but there was no response from Claimant. Ultimately, a hearing was held on the Respondents' Motion to Dismiss.
8. The Claimant failed to appear at the scheduled hearing; and he has not objected to the dismissal. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits.
9. That the Respondents' Motion to Dismiss should be granted pursuant to Commission Rule 099.13, without prejudice to the refiling of the claim within the specified limitation period.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This claim is hereby dismissed under Commission Rule 099.13, without prejudice to the refiling of this claim within the specified limitation period.

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IT IS SO ORDERED.

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**CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**

