

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H301823 & H307126

NICHOLAS DOOLEY, EMPLOYEE

CLAIMANT

**LOWES HOME CENTERS, INC.,
EMPLOYER**

RESPONDENT

SEDGWICK CMS, CARRIER

RESPONDENT

OPINION FILED DECEMBER 3, 2024

Hearing before Administrative Law Judge James D. Kennedy in Mountain Home, Arkansas on November 20, 2024.

Claimant is pro se and failed to appear.

Respondents are represented by their attorney, Dillion Cordel, of Anderson, Murphy & Hopkins.

STATEMENT OF THE CASE

A hearing was held in the above styled matter on November 20, 2024, in Mountain Home, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Ann. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant was pro se and failed to appear for the hearing. The Claimant filed an AR-C on October 27, 2023, where he alleged, he had sustained a hernia in the course of his employment on March 3, 2023, and the Respondents accepted the injury as compensable and paid appropriate benefits. The Claimant then filed a second AR-C on October 27, 2023, again alleging a hernia and the respondents denied the second hernia claim in its entirety.

The claimant moved for a change of physician from Dr. Jennifer Foster to Robert Shaw. The change of physician appointment was set for June 11, 2024, reset for June 18, 2024, reset again for June 25, 2024, and finally reset for July 19, 2024, all at the

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Claimant's request, and the Claimant did not appear for any appointment, including the final appointment set for July 19, 2024, and the Claimant did not call or provide an explanation in regard to not appearing.

The claimant's attorney filed a Motion to Withdraw, and the Motion was granted. No action has been taken by the claimant to pursue this matter since the filing of the request for a change of physician, and no hearing request or further action has been taken by the claimant in regard to this matter in over six (6) months. A Motion to Dismiss was filed by the respondents in this matter on August 5, 2024.

Appropriate notice was provided to the claimant notifying him that a hearing on the Motion to Dismiss was set for November 20, 2024, in Mountain Home, Arkansas. The claimant did not file a response and failed to appear on the hearing date. At the time of the hearing, Dillion Cordell appeared on behalf of the Respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the Respondent, it is found that this matter should be dismissed without prejudice, for failure to prosecute pursuant to A.C.A. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

ORDER

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE