

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H100164**

<b>JOHN D. DOWDEN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BASSCAT BOATS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ZENITH INSURANCE COMPANY, CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 23, 2022**

**Hearing before Administrative Law Judge James D. Kennedy in Mountain Home, Baxter County, Arkansas, on February 16, 2022.**

**Claimant is represented by Rick S. Spencer, Attorney at Law, Mountain Home, Arkansas, who appeared on behalf of the claimant. The claimant failed to appear.**

**Respondents are represented by James A. Arnold, Attorney at Law, Fort Smith, Arkansas.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on February 16, 2022, in Mountain Home, Arkansas, on Respondents' Motion to Dismiss for failure to prosecute pursuant to Rule 099.13 of the Arkansas Workers' Compensation Act and Ark. Code Ann. § 11-9-702(a)(4). Claimant's attorney, Frederick S. "Rick" Spencer, filed a Form AR-C with the Commission but no hearing was requested at the time of the filing. The claimant's deposition was taken on May 7, 2021, and a hearing was requested by Attorney Spencer on July 8, 2021, by letter. By agreement of the parties on July 26, 2021, the claim was referred to the legal advisor for mediation. A notice dated September 20, 2021, provided mediation was scheduled for January 6, 2022. By a letter dated September 24, 2021, the claimant requested that his workers' compensation claim be dropped. Since the date of May 7, 2021, the date of the claimant's deposition, the claimant has taken no steps to pursue his claim. A Motion to Dismiss was filed on December 21, 2021.

A hearing was set for February 16, 2022, in regard to the Motion to Dismiss. The claimant failed to appear at the hearing after proper notice, but it is noted that his attorney Frederick S. “Rick” Spencer did appear and confirmed that the claimant had stated he no longer wished to pursue his claim. At the time of the hearing, James A. Arnold 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 had an opportunity to hear the statements of the attorneys, there is no alternative but to find that the Motion to Dismiss should be granted at this time, and the matter should be dismissed without prejudice.

**ORDER**

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed without prejudice at this time.

**IT IS SO ORDERED.**

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**JAMES D. KENNEDY**  
**ADMINISTRATIVE LAW JUDGE**