

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H003296

JOSEPH DUCKWORTH, EMPLOYEE

CLAIMANT

B R MCGINITY MECHANICAL CONTRACTORS CO., INC.

RESPONDENT

**EMASCO INSURANCE COMPANY, CARRIER /
EMPLOYERS MUTUAL CASUALTY COMPANY, TPA**

RESPONDENT

OPINION FILED MARCH 13, 2024

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas on March 5, 2024.

Claimant is *pro se* and failed to appear.

Respondents are represented by Ms. Karen H. McKinney, Attorney-at-Law of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on March 5, 2024, in Little Rock, Arkansas on respondents' Fourth Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated §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 claim involved an alleged injury to the claimant's back, spine, and abdomen, on September 24, 2019. The respondents had filed an initial Motion to Dismiss on April 1, 2021, and a supplemental Motion to Dismiss on October 27, 2021. The Motion to Dismiss was denied. Another Motion to Dismiss was then later filed on April 28, 2023. On May 19, 2023, the claimant's attorney emailed the Commission requesting that this matter be assigned to an administrative law judge. A Prehearing Order was issued scheduling this matter for a hearing On October 3, 2023. Prior to the scheduled hearing, the parties reached an amicable Joint Petition settlement, and the hearing was removed from the

docket and a Joint Petition hearing was scheduled for September 26, 2023. Prior to the hearing on the Joint Petition, the claimant changed his mind in regard to the settlement of the matter by a joint petition. At this point, the claimant's attorney filed a Motion to Withdraw as Counsel, which was granted by the Full Commission on December 1, 2023. The claimant has failed to prosecute the claim and has not requested a hearing in the past six (6) months.

Another Motion to Dismiss was filed on January 9, 2024, requesting that the matter be dismissed for failure to prosecute pursuant to Commission Rule 099.13 and Ark. Code Ann. §11-9-702(a)(4) and Ark. Code Ann. §11-9-702(d). The claimant has not requested a hearing to date and more than six (6) months have passed since the filing of the original claim, nor is there any record of him contacting the Commission after the date his attorney was allowed to withdraw.

Appropriate notice was provided to the claimant notifying him that a hearing on the Motion to Dismiss was set for March 5, 2024, in Little Rock, Arkansas. The claimant did not file a response and failed to appear on the hearing date. At the time of the hearing, Karen H. McKinney 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 Arkansas Code Annotated §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.

IT IS SO ORDERED.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE