

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H005157**

**CLAUDE G. DUNBAR, EMPLOYEE**

**CLAIMANT**

**FARMERS GRAIN TERMINAL, INC., EMPLOYER**

**RESPONDENT**

**NATIONWIDE AGRIBUSINESS INS. CO./  
NATIONWIDE INSURANCE COMPANIES,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED NOVEMBER 3, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in McGehee, Desha County, Arkansas.

Claimant, Mr. Claude G. Dunbar, *pro se*, appeared at the hearing.

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

**STATEMENT OF THE CASE**

A hearing was held on September 30, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the September 30, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference.

**DISCUSSION**

Claimant alleged that he sustained an injury to his back and neck on October 19, 2019, while working for the Respondent-Employer.

On August 19, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.

On September 24, 2020, Claimant's counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of October 19, 2019, and asserted his entitlement to initial and additional workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "Client tripped over pipe on ground after coming down off a ladder, sustained injuries to right shoulder and other whole body."

On May 3, 2021, Claimant's previous attorney filed a Motion to Withdraw as Counsel. The Full Commission entered an Order granting the Motion on May 26, 2021.

As Claimant had not taken any action to prosecute his claim after the filing of the Form AR-C, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute on May 28, 2021. On June 7, 2021, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated June 30, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for August 11, 2021, at 1:15 p.m., at the McGehee Criminal Justice Facility, Courtroom, 2412 Hwy. 65 North, McGehee, Arkansas. Claimant responded via handwritten letter on June 28, 2021, objecting to the Respondents' Motion to Dismiss and requesting a hearing on his claim for workers' compensation benefits.

As a result of Claimant's objection and request for a hearing, the Commission entered an Order on July 8, 2021, holding Respondents' Motion to Dismiss in abeyance and directing Claimant to file a prehearing response on or before July 30, 2021.

Claimant failed to file a prehearing questionnaire response before July 30, 2021, and a hearing was set on Respondents' Motion to Dismiss for September 30, 2021, at 11:30 a.m. at the McGehee Criminal Justice Facility, Courtroom, 2412 Hwy. 65 North, McGehee, Arkansas. Respondents appeared through their attorney. Claimant appeared on his own behalf.

At the hearing, Respondents' counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702, and our Rule 099.13. Claimant maintained during his testimony that he objected to the Motion to Dismiss and that his desire was to hire an attorney and move forward with his claim. At the conclusion of the hearing, Claimant was informed that he had two (2) weeks to hire an attorney or proceed with prosecution of his claim without counsel.

After the hearing on September 30, 2021, the Commission sent a second prehearing questionnaire notice to Claimant, instructing Claimant that he had two (2) weeks to hire an attorney and file a prehearing questionnaire response, or to file a prehearing questionnaire response on his own behalf. To date, there has been no response filed by Claimant.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, the alleged work-related injury occurred on October 19, 2019. Claimant failed to take any action on his claim after filing the Form AR-C on September 24, 2020, and a hearing was scheduled on Respondents' Motion to Dismiss. When Claimant filed an objection to the Motion, the Commission entered an Order holding Respondents' Motion to Dismiss in abeyance and directing Claimant to file a prehearing questionnaire response on or before July 30, 2021. When Claimant failed to file a prehearing questionnaire response, a hearing was held on Respondents' Motion. At the hearing, Claimant requested more time to find an attorney and prosecute his claim. Therefore, Claimant was given two (2) weeks to find an attorney

or file a response to the prehearing questionnaire on his own behalf. Notice of the prehearing questionnaire was sent to Claimant immediately following the hearing, informing him that had been provided two (2) weeks to hire an attorney or file a prehearing response. To date, Claimant has failed to hire an attorney or to move forward with his claim on his own behalf.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss this claim to be well supported. Furthermore, I find that pursuant to Commission Rule 099.13, this claim for benefits should be dismissed for failure to prosecute. The dismissal is without prejudice.

### **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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant alleged that he sustained an injury to his back and neck on October 19, 2019, while working for the Respondent-Employer.
3. On August 19, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.
4. On September 24, 2020, Claimant's counsel of record at the time filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits in this matter.
5. On May 28, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. Claimant objected to the Motion to Dismiss, and an Order was entered on July 8, 2021, holding the Motion in abeyance and setting forth a deadline for Claimant to file a prehearing response.
7. Claimant failed to file a prehearing response. At a hearing on the Motion to Dismiss, Claimant appeared at the hearing and objected to the Motion to Dismiss. Claimant was given two (2) weeks to hire an attorney or proceed with prosecution of his claim without an attorney.

8. Claimant has had sufficient time to pursue this claim for workers' compensation benefits. To date, Claimant has failed to hire an attorney or to file a response to the prehearing questionnaire on his own behalf. Thus, Claimant has failed to prosecute his workers' compensation claim.
9. Respondents' Motion to Dismiss, without prejudice, is well founded.
10. Respondents' Motion to Dismiss should be granted pursuant to Commission Rule 099.13 for failure to prosecute. The dismissal is without prejudice.
11. The application of Ark. Code Ann. § 11-9-702(d) (Repl. 2012) is moot and will not be addressed.
12. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**