

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H302075**

**MICHAEL ENER,  
EMPLOYEE**

**CLAIMANT**

**BODY SHOP TRUCK & TRAILER LLC,  
EMPLOYER**

**RESPONDENT**

**FIRSTCOMP INS. CO.,  
CARRIER**

**RESPONDENT**

**MARKEL SERVICE, INC.,  
THIRD PARTY ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED MARCH 19, 2024**

Hearing conducted on Friday, March 15, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Forrest City, St. Francis County, Arkansas.

The Claimant, Mr. Michael Ener, pro se, of Wynne, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Brandon Cole, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The Claimant worked for the Respondent/Employer as an alignment helper. He allegedly injured his right shoulder on March 2, 2023, while turning a tie rod tube to align a truck. The Claimant reported his injury to the Respondent/Employer the same day. The Claimant then filed a Form AR-C on March 29, 2023, through his attorney Laura Beth York. However, Laura Beth York subsequently filed a motion to withdraw with the Commission on July 27, 2023. This motion was granted on August 8, 2023. Since the filing of Claimant's AR-C on March 29, 2023, the Claimant has not requested a full hearing.

The Respondents filed a Motion to Dismiss on October 12, 2023, requesting this claim be dismissed for lack of prosecution. The Claimant was sent notice of the motion to dismiss from the Commission on November 7, 2023. The Claimant did not respond to the motion in writing. In accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of both the respondents' motion to dismiss and the hearing notice at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, which he received on January 29, 2024. The hearing took place on March 15, 2024. The Claimant did not show up to the hearing.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, including Commission Exhibit 1, non-medical records, consisting of seven pages, I hereby make the following findings:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had notice of the March 15, 2024, hearing.
3. The Claimant has failed to prosecute his claim under AWCC Rule 99.13.
4. The Respondents' Motion to Dismiss should be granted.

### **DISCUSSION**

Consistent with both *Ark. Code Ann.* § 11-9-702(a)(4) and AWCC Rule 099.13, the Commission scheduled and conducted a hearing on the Respondents' motion to dismiss. I do find that the Respondents have proven by the preponderance of the evidence, introduced at the hearing, and contained in the record, that Claimant has not requested a hearing, nor has he taken any action

to pursue his claim as of the hearing date. Therefore, I find by the preponderance of the evidence that the Claimant has failed to prosecute his claim under AWCC Rule 99.13.

**CONCLUSION**

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted, and this claim is hereby dismissed *without prejudice*.

**IT IS SO ORDERED.**

---

Steven Porch  
Administrative Law Judge