

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205043**

**ANDRES FLORES MAYA,
EMPLOYEE**

CLAIMANT

**BFI WASTE SERVICES, LLC,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. Of NORTH AMERICA/
CCMSI,
CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MARCH 21, 2023**

Hearing conducted on Tuesday, March 21, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Andres Flores Maya, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable William C. (Bill) Frye, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, March 21, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Replacement).

By letter dated June 24, 2022, which was filed with the Commission on July 26, 2022, the claimant specifically advised he wished to withdraw his workers' compensation claim filed with the Commission on June 14, 2022. In his letter the claimant made it abundantly clear this decision was his and his alone, and that he preferred to use his personal doctor for treatment of his condition. Thereafter, the claimant's attorney at the time, the Honorable Mark Alan Peoples, filed a motion

with the Commission requesting the Commission allow him to withdraw as the claimant's attorney, which motion the Commission unanimously granted by Order dated November 18, 2022.

By letter filed with the Commission on January 16, 2023, the respondents filed a letter motion to dismiss for lack of prosecution requesting the Commission dismiss this claim without prejudice for lack of prosecution. Pursuant to the applicable law, both the claimant and his former attorney of record were mailed a copy of the respondents' letter motion to dismiss and the subject hearing notice in advance of the hearing. Once again, the claimant's former attorney advised the ALJ's office via email dated January 20, 2023, that the Commission had unanimously granted his request to withdraw some three (3) months prior by Commission order dated November 18, 2022.

The Commission's file reflects the claimant's last communication with the Commission was when he spoke to legal advisor on March 8, 2023. The Commission's legal advisor explained the motion to dismiss process, and told him the dismissal would more likely be without prejudice to the claim's refiling.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively reveals the claimant has failed and/or refused to prosecute his claim at this time.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having had the opportunity to be represented by excellent, experienced, highly ethical legal counsel, by letter dated June 24, 2022, which was filed with the Commission on July 26, 2022, the claimant specifically advised he wished to withdraw the subject claim. The Commission allowed the claimant's attorney to withdraw as her counsel by order dated and effective November 18, 2022.
3. After having been mailed due and legal notice of both the respondents' motion and the subject hearing date, the claimant neither inquired concerning or responded to the motion in any way; and he did not appear, nor cause anyone to appear on his behalf, at the subject hearing. Therefore, the claimant is deemed to have withdrawn and/or abandoned the subject claim, and to have waived his right to a hearing on the respondents' motion to dismiss without prejudice.
4. The claimant has to date failed and/or refused to request a hearing, and he has failed and/or refused to take any action(s) whatsoever to prosecute his claim.
5. Therefore, the respondents' letter motion to dismiss without prejudice filed January 16, 2023, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b), and Commission Rule 099.13.

This Order shall *not* be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf, from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

If they have not already done so, the respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

MP/mp

Mike Pickens
Administrative Law Judge

MP/mp

MP/mp