

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H308108**

**RONNIE FORREST,
EMPLOYEE**

CLAIMANT

**WELSPUN PIPES, INC.,
EMPLOYER**

RESPONDENT

**CHUBB INDEMNITY INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED JULY 18, 2024

Hearing conducted on Thursday, July 18, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant was represented by the Honorable Laura Beth York, Little Rock, Arkansas.

The Respondents were represented by the Honorable Rick Behring, Jr., Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on July 18, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant's counsel waived her appearance and the appearance of the Claimant to be present at the Motion to Dismiss hearing. Admitted into evidence was Respondent Exhibit 1, pleadings, correspondence, consisting of eleven (11) pages.

The record reflects on December 15, 2023, a Form AR-C was filed purporting that Claimant sustained injuries to left leg, right leg, and other whole body. On December 18, 2023, a Form AR-1 was filed alleging that a pipe rolled back onto Claimant pinching him between the pipe and another pipe he was grinding. Respondents filed Form AR-2 accepting the claim as compensable. Respondents' counsel, Rick Behring, Jr., entered his appearance on December 22, 2023. Respondents' counsel filed a Motion to Dismiss on June 24, 2024. The motion alleges that

since the filing of the Form AR-C on December 15, 2023, the Claimant has not filed a request for a hearing. Claimant was sent notice of the Motion to Dismiss certified and regular First-Class Mail on June 26, 2024. The Claimant did not claim the certified notice. Moreover, the notice sent out regular First-Class Mail was also returned to the Commission. Despite this effort, Claimant's counsel of record, Laura Beth York, responded to the Motion by letter dated June 28, 2024. See Respondents' Exhibit 1, page 10. The letter stated that Claimant does not object to Respondents' Motion to Dismiss if it is done without prejudice. Claimant's counsel also waived her appearance and the appearance of her client to appear at the hearing. This waiver was granted.

Despite granting the waiver and in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the hearing date via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was not claimed by Claimant. Likewise, the regular First-Class mail hearing notice was returned to the Commission. The hearing took place on July 18, 2024.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the July 18, 2024, hearing.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Claimant responded to the Motion to Dismiss by letter dated June 28, 2024. There the Claimant did not object to a dismissal without prejudice and waived his appearance for the hearing itself. Thus, I find by the preponderance of the evidence that reasonable notice was given to all parties.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed his Form AR-C on December 15, 2023. Since the filing of Claimant's Form AR-C, no request for a hearing has occurred. Based on Claimant's letter dated June 28, 2024, and the lack of activity on the claim, Respondents' motion should be granted. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim by failing to request a hearing. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

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

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge