

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H307272

JOSHUA GAYLER,  
EMPLOYEE

CLAIMANT

WENDY'S OLD FASHIONED HAMBURGERS,  
EMPLOYER

RESPONDENT

TRAVELERS CASUALTY INSURANCE CO.  
OF AMERICA/TRAVELERS INDEMNITY CO.,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 18, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

Claimant, pro se, failed to appear at the hearing.

Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for lack of prosecution, on November 6, 2024, in the above styled workers' compensation matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this matter should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or 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.

No testimony was taken at the dismissal hearing.

The record consists of the transcript of November 6, 2024, dismissal hearing and the documents held therein. Specifically, Commission’s Exhibit 1 includes six total pages of correspondence, pleadings and various other forms related to this claim, along with tracking information from the United States Postal Service; and Respondents’ Exhibit 1 consisting of fourteen (14) pages, which includes correspondence from the Commission.

### **Procedural History**

In the case at bar, the Claimant alleged that he sustained an injury on October 28, 2023, during and in the course of his employment with respondent-employer. On October 31, 2023, per a Workers’ Compensation – First Report of Injury Form, the Claimant reported to his employer that he twisted his knee as he walked out of the office. However, the evidence of record does reflect that the Claimant ever filed with the Commission a Form AR-C in this matter. Nor did the Claimant ever file with the Commission any other means of documentation sufficient to establish a claim for workers’ compensation benefits.

Nevertheless, on or about November 13, 2023, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the Respondents stated: “No injury per statutory definition.”

Subsequently, in February of 2024, prehearing questionnaires and notices were sent to the parties. The Respondents filed a timely response with the Commission on March 5, 2024. However, the Claimant did not file a response. As a result, the file was returned to the Commission’s general files.

Since the assertion of a workers’ compensation claim, the Claimant has not taken any action to pursue this matter. Nor has the Claimant made a bona fide request for a hearing, or otherwise tried to pursue his assertion for a workers’ compensation claim.

Therefore, on August 15, 2024, the Respondents filed a letter motion asking that the claim be dismissed for a lack of prosecution.

On August 21, 2024, I sent a letter to the Claimant letting him know about the motion for dismissal of this matter, along with a deadline for filing a written objection. This correspondence was sent to the Claimant via first-class and certified mail. The letter sent to the Claimant via first-class mail has not been returned to the Commission. However, the notice sent via certified mail was returned to the Commission marked “unclaimed-unable to forward.”

Yet, there was no response from the Claimant.

Nevertheless, pursuant to a Notice of Hearing dated September 12, 2024, this matter was set for a hearing on November 6, 2024, at 12:30 p.m., in El Dorado.

The hearing notice was sent to the Claimant via first-class and certified mail. The notice sent via certified mail was not returned to the Commission marked “unclaimed, unable to forward.” However, the notice sent to the Claimant via first-class mail has not been returned to the Commission. This evidence preponderates that the Claimant received notice of the hearing.

Still, there was no response from the Claimant regarding this matter.

Nevertheless, I conducted a hearing on the Respondents’ motion to dismiss as scheduled. However, the Claimant did not appear at the hearing to object to his claim being dismissed. The Respondents appeared through their attorney. During the hearing, counsel for the Respondents moved that this matter be dismissed due to a lack of prosecution. Counsel specifically noted that nothing has been done or in any way has this claim been pursued by the Claimant.

### **Analysis**

Typically, a Form AR-C is the means for filing a “formal claim,” for workers’ compensation benefits. In the present matter, no Form AR-C has ever been filed in this matter.

However, I recognize that other means exist to instigate the filing of a claim for Arkansas workers' compensation benefits other than by way of a Form AR-C.

Nevertheless, I am unable to find any document of record or even in the Commission's file that would suffice to constitute the filing of a claim for benefits. As such, I must find that no document of record exists to support a finding that the Claimant ever filed with the Commission, a claim for workers' compensation benefits in this matter.

Because no claim has ever been filed by the Claimant, I am compelled to find that there is no claim subject to dismissal per the Respondents' motion. Therefore, the motion to dismiss is hereby respectfully denied.

#### **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 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. A Form AR-C or any other document sufficient to constitute a claim for workers' compensation benefits has never been filed in this matter.
3. The evidence preponderates that the Claimant received notice of the Respondents' motion to dismiss this matter for a lack of prosecution.
4. The Respondents' motion to dismiss is denied because no claim exists to be subject to dismissal.

#### **ORDER**

The Respondents' motion to dismiss this matter is hereby respectfully denied because there is no document of evidence sufficient to constitute the filing of a claim for Arkansas workers' compensation benefits. Hence, it follows that considering that no claim has ever been filed, there

is no claim subject to being dismissed.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**