BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H506149

ERNESTO GUTIERREZ,
EMPLOYEE — CLAIMANT

EXPRESS SERVICES, INC.,
EMPLOYER — RESPONDENT

AIU INSURANCE CO./SEDGWICK CMS, INC.,
CARRIER/TPA — RESPONDENT

OPINION FILED NOVEMBER 9, 2026

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by the Honorable Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas. Mr. Peoples waived his appearance at the hearing.

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 3, 2026, 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 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110).

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

The record consists of the transcript of the November 3, 2026, hearing and the documents contained therein. In that regard, Respondents' Exhibit 1 is a Respondents' Hearing Exhibit Index encompassing ten numbered pages, and a cover sheet.

No testimony was taken.

Procedural History

On February 9, 2026, the Claimant filed a Form AR-C with the Commission alleging that he sustained injuries to his back as a result of a specific incident injury during and within the course and scope of his employment with respondent-employer, on August 8, 2025. At that time, the Claimant requested both initial and additional workers' compensation benefits in the form of every conceivable benefit under the law.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on or about September 24, 2025, wherein they accepted compensability in the form of a medical only claim.

Subsequently, Claimant did not request a hearing on his claim. However, in August of 2026, the parties reached a tentative final settlement. However, this settlement has not been executed.

Therefore, on October 29, 2026, the Respondents filed a *Motion to Dismiss for Failure to Prosecute* with the Commission, along with a Certificate of Service to the Claimant's attorney. Hence, the Respondents served a copy of the foregoing pleading on the Claimant's attorney via an email.

In correspondence sent via an email, the Claimant's attorney wrote the following:

> Claimant will not oppose dismissal, provided it is without prejudice. I will ask to be excused from any hearing and will waive appearance.

On October 29, 2026, my office sent a Notice of Hearing to the parties. At that time, the case was set for a hearing on November 3, 2026, at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

DISCUSSION

The statutory provisions and Commission Rule applicable to this claim are outlined below.

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

> If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110) reads:

> The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.
>
> In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.
>
> Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the evidence in this matter shows that the Claimant has failed to make a bona fide request for a hearing with respect to his claim for workers' compensation benefit, which was filed in February 20206. Said filing clearly occurred more than six months ago. In fact, the Claimant's work-related injury occurred more than a year ago.

Hence, no probative action whatsoever has been put forth by the Claimant to resolve or otherwise pursue his claim. Most significantly, the Claimant does not object to his claim being dismissed *without prejudice.*

Considering all the foregoing evidence, I am compelled to conclude that the Claimant has failed to prosecute his claim. Moreover, the Claimant does not object to his claim being dismissed without prejudice. Therefore, based on all the aforementioned reasons, I find that the Respondents' motion to dismiss this claim is warranted pursuant to Ark. Code Ann. §11-9-702 and our Commission Rule 099.13 (as codified at 11 C.A.R. §25-110).

Consequently, this claim is hereby respectfully dismissed due to a lack of prosecution. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on 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. The Claimant filed a claim in this matter via a Form AR-C, in February 2026. Since this time, the Claimant has failed to ask for a hearing.

3. The Respondents filed a motion to dismiss due to a lack of prosecution.

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

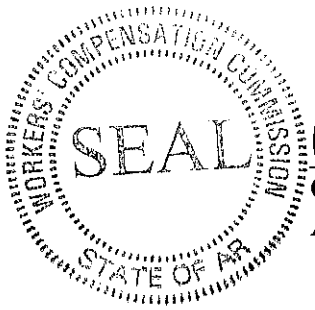
5. The Claimant does not object to his claim being dismissed *without prejudice.*

6. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, per Ark. Code Ann. §11-9-702 and 11 C.A.R. §25-110, *without prejudice*, to the refiling of it within the limitation period specified by law.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and 11 C.A.R. §25-110, this claim is hereby respectfully dismissed, *without prejudice*, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.



CHANDRA L. BLACK
Administrative Law Judge