

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H306533**

**JARED L. GOFF,
EMPLOYEE**

CLAIMANT

**JOHN WRIGHT CONSTRUCTION CO. INC.,
EMPLOYER**

RESPONDENT

**CONSTRUCTION WASTE MGMT,
UNINSURED/EMPLOYER**

RESPONDENT

**ALLIED EASTERN INDEMNITY CO.,
CARRIER/TPA (FOR JOHN WRIGHT CONSTRUCTION CO. INC.)**

RESPONDENT

OPINION FILED JULY 10, 2024

Hearing conducted on Wednesday, June 9, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Mr. Jared L. Goff, *pro se*, of Bella Vista, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Scott Zuerker and Erin Rambo for John Wright Construction Company, Fort Smith, Arkansas, and the Honorable William Frye for Construction Waste Management (Uninsured), North Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on July 9, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Admitted into evidence by Respondent/Employer, Construction Waste Management ("CWM"), was Respondent Exhibit 1, Form AR-C, consisting of one page. Respondent/Employer, John Wright Construction Company, Inc. ("JWC"), presented no exhibits. I have also blue-backed

Forms AR-1 (for both JWC and CWM), Form AR-2 (for both JWC and CWM), and AR-C (for JWC), and certified return receipt dated June 14, 2024, *as discussed infra*.

The record reflects on October 5, 2023, a Form AR-1 was filed naming JWC as Claimant's employer and his job title was driver. Respondents filed Form AR-2, denying the claim on October 5, 2023. On October 27, 2023, a Form AR-C was filed by Claimant's then-attorney, Mark Peoples, reflecting that he purportedly injured his lungs inhaling chemicals, asbestos, on August 4, 2023. This claim was filed against Respondent/Employer JWC. Another Form AR-1 was filed on November 3, 2023, purporting that Claimant was operating a grapple truck and loading demolition debris that caused shortness of breath and tiredness. This form states that CWM was the employer, and his position title was driver. Respondent/Employer CWM filed a Form AR-2 on November 3, 2023, denying compensability. Claimant filed a Form AR-C on October 19, 2023, purporting that he sustained injuries to his lung through inhalation of asbestos. Both employers in this opinion have the same owner. However, CWM does not have workers' compensation insurance.

On January 12, 2024, Claimant's counsel, Mark Peoples, filed a Motion to Withdraw as counsel. This motion was granted on February 12, 2024. Respondent's counsel for JWC next filed a Motion to Dismiss on April 29, 2024. Respondent's counsel for CWM also filed a Motion to Dismiss on April 30, 2024. The bases for both motions were a lack of prosecution by the Claimant. Claimant was sent notice of the Motion to Dismiss certified and regular First-Class Mail on May 2, 2024. The Claimant did not claim the certified notice on May 17, 2024. However, the notice sent out regular First-Class Mail was not returned to the Commission. The Claimant had twenty days to respond to the Motion to Dismiss. The Claimant did not respond to the Motion to Dismiss.

Therefore, 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 served on June 14, 2024. Likewise, the regular First-Class mail hearing notice was not returned to the Commission. The hearing took place on July 9, 2024. During oral arguments, Respondent/Employers JWC and CWM asked for AWCC Rule 099.13 to be applied to this claim. And as previously mentioned, 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 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 9, 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. Commission Exhibit 1 provides a Certified U.S. Mail Return Receipt dated June 14, 2024, and demonstrates that Claimant was served with notice of the Motion to Dismiss hearing date. Respondents' counsel for JWC and CWM were at the hearing and argued their motion. 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 against CWM on October 19, 2023. The Claimant filed his Form AR-C against JWC on October 27, 2023. Since Forms AR-C were filed, Claimant has failed to request a hearing. Moreover, despite receiving the hearing notice for the Motion to Dismiss, Claimant also failed to appear. The Claimant has clearly abandoned his claim by not doing the bare minimum in prosecuting his claim. 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