

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H003153**

<b>ZACK HARTLEY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>PINE BLUFF CUSTOM CUTTERS, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>TECHNOLOGY INSURANCE CO., CARRIER</b>	<b>RESPONDENT</b>
<b>AMTRUST NORTH AMERICA, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED MAY 7, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Zack Hartley, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on May 6, 2021, 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, and 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.

The record consists of the transcript of the May 6, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

**DISCUSSION**

On May 21, 2020, Claimant sustained an admittedly compensable injury to his back and other whole body while working for Respondent-Employer. Respondent-Insurance-Carrier filed a Form AR-2 with the Commission on June 2, 2020, accepting compensability of the claim as a result of the May 21, 2020, injury, and at the time of the filing of the AR-2, all benefits due were paid, or were in the process of being paid, in accordance with the Arkansas Workers' Compensation Statute.

On July 8, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant alleged that he sustained a compensable injury to his back and other whole body on May 21, 2020, while working for Respondent-Employer. Specifically, the following description was stated for Claimant's accidental injury: "Claimant was in the course and scope of employment when he was in a motor vehicle accident. He sustained injuries to his back and other whole body."

Subsequently, there was no action taken by Claimant to prosecute his claim after the filing of the Form AR-C on July 8, 2020.

Therefore, on March 9, 2021, Respondents filed a Motion to Dismiss for failure to prosecute and a Certificate of Service to Claimant. On March 11, 2021, the Commission sent a Notice to Claimant advising him of Respondents' Motion to Dismiss and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated April 2, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for failure to prosecute. Said hearing was scheduled for May 6, 2021, at 11:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A," 324 S. Spring Street, Little Rock, Arkansas.

Notice was provided to claimant via First-Class Mail and Certified Mail to Claimant's address. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing. At the hearing, Respondents' attorney advised that Respondents had accepted the claim and paid benefits until approximately July or August of 2020, when Claimant failed to attend his doctor appointments, failed to attend an appointment for an Independent Medical Evaluation (IME), and failed to attend his deposition. Counsel also advised that it had been ten (10) months since the filing of the Form AR-C on July 8, 2020, and Claimant had failed to take any action to pursue his claim for workers' compensation benefits. As such, counsel requested that the motion be granted.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been ten (10) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed and/or refused to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion Dismiss to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

**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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 2, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission, accepting compensability of the claim as a result of the May 21, 2020, injury, and at the time of the filing of the AR-2, all benefits due were paid, or were in the process of being paid, in accordance with the Arkansas Workers' Compensation Statute.
3. On July 8, 2020, Claimant filed a Form AR-C with the Commission, alleging that he sustained a compensable injury to his back and other whole body on May 21, 2020, while working for Respondent-Employer.
4. Ten (10) months have passed since Claimant filed a Form AR-C with the Commission. Since this time, Claimant has failed to make a *bona fide* request for a hearing or otherwise pursue his claim for workers' compensation benefits.
5. On March 9, 2021, Respondents filed a Motion to Dismiss for failure to prosecute.
6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
7. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
9. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

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**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**