

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H100713

DAVID HIGBY, Employee

CLAIMANT

DIAMOND WASH LLC, Employer

RESPONDENT

ACCIDENT FUND NATIONAL INSURANCE CO., Carrier

RESPONDENT

OPINION/ORDER FILED DECEMBER 22, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by LAURA BETH YORK, Attorney, Little Rock, Arkansas; although not present at hearing.

Respondent represented by LAURA J. PEARCE, Attorney, Fort Smith, Arkansas.

OPINION/ORDER

This case comes on for review following a hearing on respondent's Motion to Dismiss.

On January 20, 2021, Laura Beth York, claimant's attorney, filed a Form AR-C requesting various compensation benefits; however, no hearing was requested. On January 21, 2021 Ms. York propounded interrogatories and requests for production of documents and respondents responded to the discovery requests. Since January 21, 2021, there has been no request for additional activity to be taken by the Commission.

A hearing was set in regard to the respondent's Motion to Dismiss for December 9, 2021. By e-mail dated October 29, 2021, Ms. York indicated that she would waive her appearance at the hearing and further indicated that she had no objection to the Motion to Dismiss "WITHOUT prejudice." Notice of that hearing was also sent to claimant by certified mail, return receipt requested, on November 1, 2021. That notice was returned by the United States Postal Department with the notation, "Return to Sender. Unclaimed. Unable to Forward."

After my review of respondent's Motion to Dismiss, Ms. York's response thereto that she had no objection to the motion to dismiss without prejudice, and the claimant's failure to appear at the scheduled hearing, as well as all other matters properly before the Commission, I find that respondent's Motion to Dismiss this claim should be and hereby is granted pursuant to A.C.A. §11-9-702(a)(4). This dismissal is without prejudice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**