

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H109609

DAVID HIGBY, Employee

CLAIMANT

TEC, THE EMPLOYMENT CO., Employer

RESPONDENT

MIDWEST INS. CO., Carrier/TPA

RESPONDENT

OPINION FILED JANUARY 9, 2024

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

Claimant not represented by counsel and not appearing at hearing.

Respondent represented by MICHAEL C. STILES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On November 29, 2021, the claimant filed an AR-C requesting various compensation benefits in which he alleged an injury to his hands on September 22, 2021. The claim was accepted as compensable, and benefits were paid. The claimant, through his attorney, Michael Ellig, requested a hearing on February 8, 2021. Both parties agreed to mediate; however, mediation attempts failed as Mr. Ellig lost contact with the claimant. The hearing request was withdrawn on April 28, 2022.

On August 29, 2022, Mr. Ellig filed a Motion to Withdraw as Counsel, which the Full Commission granted on September 9, 2022. No further action was taken regarding this claim.

On October 3, 2023, the respondents filed a Motion to Dismiss requesting that this claim be dismissed for lack of prosecution. The respondents mailed the claimant a copy of the Motion to Dismiss and received no response from the claimant. A hearing was scheduled for December 14, 2023. Notice of that hearing was sent to the claimant by certified mail, return receipt requested on November 13, 2023. United States Postal Department records do not verify claimant's receipt of the Notice of Hearing. On December 7, 2023, an attempt to contact the claimant by telephone was made but the telephone number listed was no longer valid.

After my review of the respondents' Motion to Dismiss, the claimant's lack of response thereto, and all other matters properly before the Commission, I find that respondents' Motion to Dismiss this claim should be and hereby is granted pursuant to Commission Rule 099.13. This dismissal is without prejudice.

ORDER

Pursuant to the above statement of the case and Commission Rule 099.13, I have no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

If respondents have not already done so, they are directed to pay the court reporter, Veronica Lane, her fees and expenses within thirty (30) days of receipt of her invoice.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**