

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H003793**

**CURTIS HITCHOCK,
EMPLOYEE**

CLAIMANT

**LIFENET, INC.,
EMPLOYER**

RESPONDENT

**ARGONAUT INS. CO.,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MAY 5, 2021**

Hearing conducted on Wednesday, May 5, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable Charles R. Padgham, Padgham Law Firm, Hot Springs, Pulaski County, Arkansas.

The respondents were represented by the Honorable William C. Frye, Frye Law Firm, North Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, May 5, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Repl.).

The respondents filed a motion to dismiss without prejudice via email with the Commission on or about March 23, 2021, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant and his attorney were mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at their addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested. (Commission Exhibit 1).

The claimant's attorney advised on the record at the hearing the claimant had no objection to the respondents' motion to dismiss, so long as the dismissal was without prejudice. Likewise, in the interests of full and complete disclosure, the respondents' attorney advised on the hearing record the date he contended the applicable statute of limitations would expire. (*See*, Hearing Transcript). It appears at least for the time being the claimant has returned to work for the respondent-employer, was employed as of the date of the subject hearing, and is pursuing a third-party action against the alleged tortfeasor in a circuit court of competent jurisdiction.

The record herein consists of the hearing transcript and any and all exhibits contained therein and/or attached thereto, as well as the Commission's entire file in this matter.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively reveals the claimant has failed and/or refused to prosecute his claim at this time. Moreover, the claimant's attorney advised on the record at the subject hearing that the claimant had no objection to the respondents' motion to dismiss so long as the dismissal was without prejudice to the claimant's refiling of the claim within the time periods prescribed by the applicable statute(s) of limitation(s).

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

3. The claimant has to date failed and/or refused to prosecute his claim, nor has he requested a hearing for additional benefits within the last six (6) months.
4. Moreover, the claimant's attorney appeared in person at the subject hearing and advised on the record the claimant has no objection to the claim's dismissal, so long as the dismissal is without prejudice.
5. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission via email on or about March 23, 2021, should be and hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp