

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H306052**

**KENNETH J. HOOPER,
EMPLOYEE**

CLAIMANT

**BLAN TRACTOR CO., INC.,
EMPLOYER**

RESPONDENT

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

RESPONDENT

**OPINION TO DISMISS WITHOUT PREJUDICE
FILED MAY 8, 2024**

Hearing conducted on Wednesday, May 8, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Kenneth J. Hooper, pro se, of Hampton, Calhoun County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable R. Scott Zuerker, Ledbetter, Cogbill, Arnold & Harrison, LLP, Fort Smith, Sebastian County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, May 8, 2024, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement) and Commission Rule 099.13 (2024 Lexis Replacement). The hearing was scheduled to begin at 11 a.m. but, as is his standard operating procedure, the ALJ provided the claimant additional time to appear before he began the hearing. The ALJ sounded the hall, determined the claimant was not present, and he began the hearing.

The respondents filed a motion to dismiss without prejudice (MTD) with the Commission on March 18, 2024, requesting this claim be dismissed without prejudice for lack of prosecution. Consistent with the applicable Arkansas law, thereafter the Commission mailed a copy of both the

respondents' MTD and the subject hearing notice to the claimant via the United States Postal Service (USPS), Certified Mail, Return Receipt Requested, to his last known address of record with the Commission, which the claimant received in March 2024 and April 2024, respectively. (Commission Exhibits 1 and 2). Thereafter, the claimant failed and/or refused to respond in any way to either the Commission or to the respondents; and she failed and/or refused to appear at the subject hearing. The claimant never objected in any way to the respondents' MTD. The claimant had at one time been represented by counsel, but was pro se at the time of the hearing date pursuant to the Commission's order filed January 9, 2024, granting the claimant's attorney's motion to withdraw as counsel. (Respondents' Exhibit 1B; Reporters' Hearing Transcript)

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Repl.), 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' MTD. 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 demonstrates the claimant has both failed and/or refused to prosecute his claim, and he has failed and/or refused to request a hearing within the last six (6) months.

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.

2. After the Commission mailed due and legal notice of both the respondents' letter MTD as well as a copy of the notice for the subject hearing to the claimant's last known address of record with the Commission, the claimant failed and/or refused to respond to the MTD in any way; or to object to the subject MTD; or to request a hearing on the merits of his claim.
3. Moreover, the claimant failed and/or refused to appear at the subject hearing and, therefore, has waived his right to a hearing on the MTD.
4. The claimant has failed to request a hearing on the merits of his claim within the last six (6) months.
5. Therefore, the respondents' aforementioned MTD filed with the Commission on March 18, 2024, should be and hereby is GRANTED.
6. 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 this 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