

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H009406**

**CODY HUBBARD,
EMPLOYEE**

CLAIMANT

**AXIS ENERGY SERVICES, LLC
EMPLOYER**

RESPONDENT

**BERKLEY NAT'L INS. CO./
YORK RISK SERVICES GROUP, INC.
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JULY 28, 2021**

Hearing conducted on Wednesday, July 28, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Cody Hubbard, Damascus, Faulkner (and Van Buren) County(ies), Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by Mr. Guy Alton Wade, Friday, Eldredge & Clark, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, July 28, 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 letter motion with the Commission on June 28, 2021, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at his current addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested. Thereafter, the

claimant failed and/or refused to respond to the respondents' motion in any way. Moreover, the claimant failed and/or refused to appear at the scheduled hearing.

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

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. The claimant's attorney waived appearance at the hearing.
3. The claimant has to date failed and/or refused to prosecute his claim. In addition, the claimant has failed and/or refused to request a hearing within the last six (6) months.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on June 28, 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

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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