

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H002845**

JAMES JACKSON,  
EMPLOYEE

CLAIMANT

TRI STATE IRON & METAL, COMPANY  
INCORPORATED, EMPLOYER

RESPONDENT

AIG CLAIMS,  
CARRIER/TPA

RESPONDENT

**OPINION FILED AUGUST 13, 2021**

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, failed to appear.

Respondents were represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on July 14, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Arkansas Code Annotated §11-9-702 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the July 14, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

## DISCUSSION

On July 22, 2020, the Claimant's then attorney filed with the Commission, a claim for workers' compensation benefits by way of a Form AR-C. Specifically, Counsel alleged: "Claimant alleged that during the course and scope of his employment, he suffered injuries to his back, hip, and knees." He checked all the boxes for both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on May 18, 2020, wherein they accepted compensability of the claim. The Respondents accepted the claim for injuries to the Claimant's left hip, left knee, and low back.

At the request of the Claimant, this matter was scheduled for a prehearing telephone conference before the Commission with the parties for October 20, 2020. However, at the time of the telephone conference, the parties notified the Commission that they had not completed discovery. As a result, the claim was set for another prehearing telephone conference for November 18, 2020. The Claimant's attorney requested via e-mail on November 17, 2020, a continuance of the telephone conference due to personal reasons. This request was granted. Another prehearing telephone conference was scheduled in the claim for December 2, 2020. At the time of the prehearing telephone conference, the parties advised that they were working on the completion of some discovery and possibly a settlement. As a result, on December 3, 2020, the file was returned to the Commission general files.

Since this time, there has been no action on the part of the Claimant to prosecute this claim, or otherwise pursue benefits.

Respondents filed a Respondents' Motion to Compel and/or Motion to Dismiss and Incorporated Brief in Support with the Commission on February 12, 2021. The Commission

entered an Order to Compel on April 7, 2021. Per said order, the Claimant was given twenty (20) days to provide the executed documents. The motion for dismissal was held in abeyance. However, the Claimant failed to comply with the Order to Compel.

On or about April 30, 2021, the Claimant's attorney filed with the Commission a motion to be relieved as counsel of record. Counsel stated several grounds for being relieved as counsel of record. Specifically, counsel's stated grounds included the Claimant's failure to communicate and cooperate with him. Other grounds included the Claimant's failure to provide the Respondents with the requested authorizations contrary to an Order to Compel entered by the Commission on April 7, 2021.

Therefore, on or about May 3, 2021, the Respondents filed with the Commission a Respondents' Motion to Dismiss with Prejudice, along with a Certificate of Service to the Claimant's attorney.

The Commission sent a Notice to the Claimant and his attorney, on May 20, 2021, informing them of the Respondents' motion, and a deadline of June 1, 2021, for filing a written response.

On June 8, 2021, the Commission entered an order granting the Claimant's attorney request to withdraw from representing the Claimant in this matter.

Therefore, the Commission sent another Notice to the Claimant on June 8, 2021, informing him of the Respondents' motion, and a deadline of June 29, 2021, for filing a written response. Information received from the United States Postal Service regarding the delivery information for this Certified Mail shows that this item was delivered to the Claimant's last known address.

Pursuant to a Hearing Notice dated June 29, 2021, the Commission notified the parties that the matter had been set for a hearing on the motion for dismissal of this claim due to a lack of

prosecution. Said hearing was scheduled for on July 14, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

Information received by the Commission from the United States Postal Service appears to reflect that as of July 1 2021, they had left notice of this parcel of mail, but no authorized recipients was available.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney.

Counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. Counsel noted that the Claimant has failed to respond to discovery requests despite the filing of a Motion to Compel and an order being entered. It appears that the Claimant has refused to provide Respondents with authorizations. Counsel moved that this claim be dismissed with prejudice. He further noted that if this claim is dismissed without prejudice, this could lead to the Claimant being able to delay his claim and potentially prejudice his clients from being able to defend the case and mitigate their damages.

As shown by the evidence recounted above, (1) reasonable notice of the motion to dismiss was attempted on the parties of the hearing; and (2) Claimant has failed to pursue his claim because he has taken no bona fide action in pursuit of it (including appearing at the July 14, 2021 hearing to argue against its dismissal) since the filing of the Form AR-C on July 22, 2020. Thus, the evidence preponderates that dismissal is warranted under Rule 099.13. Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9- 702 (Repl. 2012). That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. Loosey v. Osmose Wood Preserving Co., 23 Ark. App. 137, 744 S.W.2d 402 (1988). In Abo v. Kawneer Co., 2005 AWCC

226, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice.” (emphasis added) (citing Professional Adjustment Bureau v. Strong, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal with prejudice. But based on the above authorities, I find that the dismissal of this claim should be and hereby is entered without prejudice, to the refile of it within the limitation period specified by law.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Arkansas Code Annotated. §11-9-704 (Repl. 2012).

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On July 20, 2020, the Claimant’s attorney filed a Form AR-C, with the Commission, alleging that the Claimant sustained injuries to his back, hip and knees in the course of his employment with the Respondents.
3. The respondent-insurance-carrier filed a Form AR-2, with the Commission on May 18, 2020 accepting the claim for a compensable injuries to the Claimant’s left hip, left knee, and low back.
4. Since the filing of the Form AR-C, the Claimant has failed to prosecute, or otherwise advance his claim.
5. On May 3, 2021, the Respondents filed with the Commission, a Respondents’ Motion to Dismiss with Prejudice.
6. The evidence preponderates that Claimant has failed to prosecute this Claimant under Arkansas Workers’ Compensation Commission Rule 099.13.
7. Appropriate Notice of this hearing was attempted on all parties to their last known address, in the manner prescribed by law.

8. The motion to dismiss is granted; the claim is hereby dismissed without prejudice Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Workers' Compensation Commission Rule Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**