

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H003866

JORDAN JESTER, Employee

CLAIMANT

**KEITH SMITH D/B/A KEITH SMITH TRUCKING, Employer
(Uninsured)**

RESPONDENT

OPINION/ORDER FILED MAY 18, 2021

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

Claimant represented by MARK ALAN PEOPLES, Attorney at Law, Little Rock, Arkansas.

Uninsured Respondent is not represented and was not present at the hearing.

OPINION/ORDER

On February 25, 2021, the above captioned claim came on for a contempt hearing in Fort Smith, Arkansas.

The claimant in this matter has propounded to the uninsured respondent, Keith Smith d/b/a Keith Smith Trucking, Interrogatories and Requests for Production of Documents on June 17, 2020, July 27, 2020, and August 31, 2020. The uninsured respondent has failed to answer or reply to any portion of the discovery process. On October 8, 2020, the Commission sent a letter from this Administrative Law Judge giving the uninsured respondent twenty (20) days from the date of that letter to answer said discovery. The uninsured respondent has failed to comply. That letter was sent both certified mail/return receipt requested and regular mail to the uninsured respondent. The United States Postal Service internet log indicates that the letter was delivered to the uninsured respondent on October 10, 2020 at 10:26 a.m. in Mt. Ida, Arkansas 71957. To date, the uninsured respondent has not responded to the claimant or the Commission.

On December 15, 2020, the Commission received Claimant's Motion for Contempt to Exclude Evidence, For Attorney's Fees and For Other Appropriate Sanctions which is part of the Commission's

exhibit. On December 16, 2020, the Commission sent a letter both certified mail/return receipt requested and regular mail to the uninsured respondent which set a Motion for Contempt hearing on February 25, 2021 at 10:30 a.m. That letter was accompanied by a Notice of Hearing which set the date/time/place of the Motion for Contempt hearing. The United States Postal Service return, which is part of the Commission's exhibit, shows a delivery date of December 18, 2020 in Mt. Ida, Arkansas 71957.

The claimant's attorney appeared at said date/time/place; however, the uninsured respondent did not appear. From a review of the United States Postal Service logs, it is clear that the uninsured respondent has had notice of the particulars of the workers' compensation claim brought against it, but has neglected, or at worst, refused to participate in discovery or communication with the Commission. The utter lack of response, including the uninsured respondent's failure to appear at the hearing and in multiple discovery attempts by the claimant, is unsettling. After my review of this matter in its entirety, I find the uninsured respondent in contempt of the Commission in that the uninsured respondent has failed to comply with the Commission's November 3, 2020 Order to Compel.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The uninsured respondent is found to be in contempt of the Commission's Order to Compel dated November 3, 2020.

2. The uninsured respondent shall, within thirty (30) days, pay the costs associated with the court reporter fee totaling \$216.35. That payment should be remitted to Gaffney Court Reporting, P.O. Box 7210, Springdale, Arkansas 72762.

3. The uninsured respondent shall be barred from the use of any evidence requested by the claimant in discovery dated June 17, 2020, July 27, 2020, and August 31, 2020, unless responses are provided thirty (30) days prior to the hearing in this matter.

4. The hearing in this matter shall be set in the normal course after the time for appeal of this Opinion has run or after completion of the appellate process.

5. The uninsured respondent in this matter shall pay a reasonable fee associated with the mileage traveled by the claimant’s attorney from Little Rock, Arkansas to Fort Smith, Arkansas and his return at the rate set by the State of Arkansas for travel.

ORDER

The uninsured respondent in this matter is found to be in contempt of the Commission’s Order to Compel dated November 3, 2020. The uninsured respondent shall pay the costs associated with the Court Reporter’s fee totaling \$216.35. The uninsured respondent shall be barred from providing evidence associated with requests for discovery from June 17, 2020, July 27, 2020, and August 31, 2020, unless those responses are provided thirty (30) days prior to the hearing in this matter.

The hearing in this matter shall be set in the normal course of setting after the time for appeal has run or after the completion of the appellant process. The uninsured respondent shall pay the costs associated with the claimant’s attorney roundtrip travel from Little Rock, Arkansas to Fort Smith, Arkansas at the rate set by the State of Arkansas for travel which is \$0.42 per mile.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**