

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G800841 & G807910**

**TOMMY JACKSON, EMPLOYEE**

**CLAIMANT**

**ARKANSAS DEPARTMENT OF CORRECTION,  
EMPLOYER**

**RESPONDENT NO. 1**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
CARRIER/TPA**

**RESPONDENT NO. 1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED JUNE 21, 2022**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant, Mr. Tommy Jackson, was represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas. Mr. Caldwell appeared at the hearing on Claimant's behalf. The Claimant did not appear at the hearing.

Respondents No. 1 were represented by Mr. Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on April 21, 2022, 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 Ark. Code Ann. § 11-9-702 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 April 21, 2022, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated by reference. Claimant's Exhibit No. 1 consists of a two (2)-page Motion to be Relieved as Counsel. Claimant's Exhibit No. 2 consists of a one (1)-page letter from the Commission to the Claimant informing the Claimant of counsel's Motion to be Relieved as Counsel. Claimant's Exhibit No. 3 is three (3) pages and consists of a letter and Order from the Commission denying counsel's Motion to be Relieved as Counsel. Claimant's Exhibit No. 4 is one (1) page and consists of an e-mail communication from Claimant's counsel to the parties, including the Commission. Respondents No. 1 submitted an exhibit packet, labeled as Respondents No. 1's Exhibit No. 1, consisting of fourteen (14) pages, including the Form AR-C in G800841; the Form AR-C in G807910; a July 8, 2021, letter from the Commission to the parties returning the claims to the Commission's general files; Respondents No. 1's Motion to Dismiss; Claimant's request for a hearing; the January 12, 2022, Order from the Commission holding Respondents No. 1's Motion to Dismiss in abeyance; and the Commission's Notice of Hearing. The parties' exhibits were admitted into evidence.

### **BACKGROUND**

The evidence reflects that Claimant filed a Form AR-C in claim G800841 on June 3, 2019, alleging an injury to his left hand on or about January 27, 2018. In the Form AR-C, the cause of injury and the part of his body injured, was described as: "During the course and scope of his employment, he suffered injuries to his left hand." Per the Form AR-C, the Claimant asserted his entitlement to both initial and additional workers' compensation benefits.

Claimant also filed a second Form AR-C in claim G807910 on June 3, 2019, alleging an injury to his left hand on or about November 14, 2018. In the Form AR-C, the cause of injury and

the part of his body injured, was identical to his corresponding AR-C in G800841. In both Form AR-Cs, the Claimant asserted his entitlement to initial and additional workers' compensation benefits.

In claim G800841, Respondent-Carrier filed a Form AR-2 with the Commission on February 20, 2018. Respondent-Carrier accepted this claim as compensable and paid some benefits.

In claim G807910, Respondent-Carrier filed a Form AR-2 with the Commission on November 27, 2018. Respondent-Carrier accepted this claim as compensable and paid some benefits.

The evidence also reflects that on February 11, 2020, Claimant filed a Motion for an Independent Medical Examination, which was denied by the Commission on March 10, 2020. The Claimant filed an appeal to the Full Commission on March 17, 2020. The Full Commission vacated the administrative law judge's order and remanded for proper findings of fact and conclusions of law based on a sufficient record.

During the prehearing process, a Prehearing Order was entered on January 19, 2021, wherein the parties stipulated to the following: Claimant has elected to abandon the issue of his entitlement to an independent medical evaluation, which was the subject of an appeal to and a remand from the Full Commission. On March 5, 2021, by way of e-mail communication, Claimant's counsel confirmed that Claimant had, in fact, abandoned the issue of an Independent Medical Examination. However, by way of e-mail communication on March 11, 2021, Claimant's counsel requested to reinstate his request for an Independent Medical Examination and requested that the upcoming hearing (scheduled for the next day) be limited to making an appropriate record for the same pursuant to a recent case handed down by the Full Commission. As determined by

the Commission, the hearing was cancelled, and the parties were instructed to submit new prehearing filings.

On May 7, 2021, a second Prehearing Order was entered, and the matter was scheduled for a hearing on July 7, 2021, in McGehee, Arkansas. However, on July 6th, the day before the scheduled hearing, Claimant's counsel requested a second continuance due to Claimant's recent relocation to Memphis and his lack of transportation to the hearing. On July 8, 2021, the Commission issued a letter to the parties, highlighting the recent requests for continuances on the eve of the hearings, and sending the matter back to the Commission's general files until the parties were truly ready to proceed to a hearing.

On December 14, 2021, Respondents No. 1 filed a Motion to Dismiss for Want of Prosecution. On January 6, 2022, Claimant notified the Commission that he objected to the Motion to Dismiss and requested a hearing on the merits. As a result, the Commission entered an Order on January 12, 2022, holding the Motion to Dismiss in abeyance and directing the parties to file prehearing questionnaire responses.

On March 8, 2022, Claimant's counsel notified the Commission via e-mail that he had been unable to reach the Claimant, and despite speaking with a family member, he had not been able to locate the Claimant. Claimant's counsel asked to be relieved as counsel of record, as he was not convinced that the Claimant would maintain communication with him or appear at a scheduled hearing. The Commission sent notice to the parties of Claimant's counsel's Motion to Withdraw on March 8, 2022. There was no response from the Claimant in this regard.

Subsequently, the Commission entered an Order on March 28, 2022, denying the Motion to Withdraw. Pursuant to a Hearing Notice dated March 14, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents No. 1's Motion to Dismiss. Said

hearing was scheduled for April 21, 2022, at 12:00 p.m., at the Federal Building (Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. The Hearing Notice was sent to all parties, and the Claimant's notice was sent via certified mail and regular mail. Tracking information received by the Commission from the United States Postal Service shows that the certified letter was delivered on March 31, 2022, and a signature was obtained. Still there was no response from the Claimant.

Therefore, a hearing was in fact conducted as scheduled on Respondents No. 1's Motion to Dismiss. Respondents No. 1 appeared through their attorney. Claimant's attorney also appeared. Claimant did not appear at the hearing. Respondent No. 2 waived appearance at the hearing.

Respondents' counsel advised that he filed the Motion to Dismiss as a result of a lack of prosecution of Claimant's claims in G800841 and G807910. When the Motion was filed on December 14, 2021, the claims had been returned to the Commission's general files on July 8, 2021, almost six (6) months prior, and no action had been taken on the matters since that time. Although Claimant objected to the Motion to Dismiss, Claimant had not pursued a hearing date for either claim. As a result, Respondents' Counsel argued that dismissal for want of prosecution was appropriate for both claims as Claimant had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since the second full hearing had been cancelled in July of 2021. As such, Respondents' counsel requested that the claims be dismissed.

Claimant's counsel advised that he had lost contact with the Claimant and had been unable to locate him, which was the basis for his filing the Motion to Withdraw. However, because his Motion to Withdraw had been previously denied, and because the Claimant had not appeared to object to the claims being dismissed, he felt he was ethically obligated to object to the Motion to

Dismiss because there were likely benefits which the Claimant was entitled to receive. He acknowledged that Claimant was sent proper notice of the hearing and that the certified mail had been delivered and a signature obtained. He also acknowledged that the Claimant had not objected to the Motion to Withdraw or appeared at the hearing on the Motion to Dismiss.

### **DISCUSSION**

The applicable Commission Rule 099.13 is outlined below, in relevant part:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

A review of the evidence shows that the Claimant has failed to respond to the written notices of the Commission both with regard to Claimant's counsel's Motion to Withdraw, as well as Respondents No. 1's Motion to Dismiss. Furthermore, Claimant did not appear at the hearing to object to the dismissal. Considering the foregoing, I am persuaded to conclude that the Claimant has abandoned his claims for worker's compensation benefits.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that Respondents No. 1's Motion to Dismiss this claim is warranted under the provisions of Rule 099.13 of this Commission. Said dismissal is without prejudice, to the refiling of this claim 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 Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of the claims.
2. Claimant filed a Form AR-C on June 3, 2019, alleging an injury to his left hand on or about January 27, 2018 (G800841), and a second Form AR-C on November 14, 2018 (G807910), also alleging a left hand injury, and requesting both initial and additional benefits.
3. Respondent-Carrier filed two Form AR-2s with the Commission on February 20, 2018, (G800841) and on November 27, 2018, (G807910) accepting the claims as compensable and paying some benefits.
4. On two occasions (March 11, 2021, and July 6, 2021), on the eve of the full hearing, Claimant's counsel requested a continuance. Both continuances were granted by the Commission.
5. On December 14, 2021, Respondents No. 1 filed a Motion to Dismiss for Want of Prosecution; Claimant objected to the motion and requested a hearing on the merits. The Commission entered an Order on January 12, 2022, holding the motion in abeyance and directing the parties to file prehearing questionnaire responses.
6. On March 8, 2022, Claimant's counsel requested to be relieved as counsel of record.
7. The Commission entered an Order on March 28, 2022, denying the Claimant's counsel's Motion to Withdraw and informing the parties that a hearing on Respondents No. 1's Motion to Dismiss would be scheduled.
8. Reasonable notice of the motion to dismiss and hearing thereon was provided to the parties. The Claimant has failed to respond to the notices of the Commission, and he did not appear at the hearing to object to his claims being dismissed. He has also lost contact with his attorney.
9. The evidence shows that the Claimant has abandoned his claims for workers' compensation benefits.
10. The evidence preponderates that the Respondents No. 1's Motion to Dismiss the claims is warranted.

11. Respondents No. 1's Motion to Dismiss is hereby granted pursuant to Commission Rule 099.13 for failure to prosecute. The dismissal is without prejudice.
12. As the claims are dismissed, Claimant's counsel's Motion to Withdraw is rendered moot.

**ORDER**

Pursuant to the findings of fact and conclusions of law set forth above, the claims are hereby dismissed pursuant to Commission Rule 099.13 for failure to prosecute. The dismissal is without prejudice, to the refiling of this claim within the limitation period specified by law.

Claimant's counsel's Motion to Withdraw has been rendered moot.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**