

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G907733**

**JAMES M. KELLEY,  
EMPLOYEE**

**CLAIMANT**

**AUTOZONE, INC.,  
EMPLOYER**

**RESPONDENT**

**INDEMNITY INS. CO. OF NORTH AMERICA/  
GALLAGHER BASSETT CLAIMS MG'T SERVICES, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED APRIL 21, 2021**

Hearing conducted on Tuesday, April 20, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, James M. Kelley, pro se, Vilonia, Faulkner County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Eric Newkirk, Mayton, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Tuesday, April 20, 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 Supplement) and Commission Rule 099.13 (2020 Lexis Supp.).

The respondents filed a motion to dismiss without prejudice with the Commission on March 12, 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, which on or about April 14, 2021. (Commission Exhibit 1). In addition, earlier – on

April 9, 2021 – the claimant talked to a legal advisor in the Commission’s Legal Advisor Division concerning the respondents’ motion to dismiss and the subject hearing, indicating he was aware of both at that time. The claimant told the legal advisor he “was not interested in pursuing” this claim. (Commission Exhibit 2 at 2). The claimant has in fact returned to work for the respondent-employer, and was employed as of the date of the 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 failed and/or refused to appear at the hearing and, therefore, is deemed to have waived appearance at the hearing.
3. The claimant has to date failed and/or refused to prosecute his claim, nor has he requested a hearing for additional benefits within the last six (6) months.
4. Moreover, The claimant recently has specifically advised the Commission he is “not interested” in pursuing this claim. The claimant has returned to work for the respondent-employer, and was employed as of the date of the hearing.

5. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on March 12, 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 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.**

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Mike Pickens  
Administrative Law Judge

MP/mp