

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H203720

KEVIN KILLMAN, Employee

CLAIMANT

SPRINGDALE WATER & SEWER, Employer

RESPONDENT

ACCIDENT FUND INS., Carrier/TPA

RESPONDENT

OPINION FILED MAY 9, 2023

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant not represented by counsel and not appearing at hearing.

Respondent represented by JAMES A. ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

This case comes on for review following a hearing on respondents' Motion to Dismiss.

On March 7, 2023, a hearing on Respondents' Motion to Dismiss was conducted in Springdale, Washington County, Arkansas. On December 1, 2022, the respondents filed a Motion to Dismiss and requested that this case be dismissed for lack of prosecution. On December 12, 2022, a hearing notice was sent to the parties setting this matter for a dismissal hearing on January 31, 2022. Due to inclement weather, however, the hearing was postponed, and another Notice of Hearing was sent to the parties on February 3, 2023, notifying them that a hearing was scheduled for March 7, 2023. The claimant's notice was mailed to him at his last known mailing address by certified and regular mail. That notice was returned by the United States Postal Department with the notation "Return to Sender. Unable to Forward."

On May 25, 2022, Claimant's previous attorney, Michael L. Ellig, filed an AR-C requesting various compensation benefits. Mr. Ellig filed a Motion to Withdraw on July 27, 2022, and the Full Commission granted that Motion on August 9, 2022. No further action was taken in this claim.

Before withdrawing as claimant's counsel, Mr. Ellig informed the respondents that the claimant had moved to Farmington, New Mexico and no longer wished to pursue his claim.

Given the lack of activity or effort to prosecute and move this case forward and the claimant's lack of attendance at the hearing, I do think it is appropriate that I dismiss this matter without prejudice.

After my review of the respondents' Motion to Dismiss, the claimant's lack of response thereto, and all other matters properly before the Commission, I find that respondents' Motion to Dismiss this claim should be and hereby is granted pursuant to Commission Rule 099.13. This dismissal is without prejudice.

ORDER

Pursuant to the above statement of the case and Commission Rule 099.13, I have no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

If respondents have not already done so, they are directed to pay the court reporter, Veronica Lane, her fees and expenses within thirty (30) days of receipt of her invoice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE