

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H207568**

**JIMMY MARTINEZ,
EMPLOYEE**

CLAIMANT

**TYSON POULTRY, INC.,
EMPLOYER**

RESPONDENT

**TYSON POULTRY, INC./
TYNET CORP.
CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED AUGUST 16, 2023**

Hearing conducted on Tuesday, August 15, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Jimmy Martinez, pro se, of Hope, Hempstead County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable J. Matthew Mauldin, Roberts Law Firm, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, August 15, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Repl.).

On June 19, 2023, the respondents filed with the Commission a motion to dismiss without prejudice (MTD) and brief in support thereof requesting that this claim be dismissed for lack of prosecution. Thereafter, pursuant to the applicable law and in advance of the hearing the claimant was mailed a copy of the respondents' MTD and the subject hearing notice via the United States Postal Service (USPS), Certified Mail, Return Receipt Requested, which he received on July 21, 2023. (Commission's Exhibit 1). Thereafter, the claimant failed and/or refused to object to the

respondents' MTD, or to respond in any way to either the Commission or the respondents; and he failed and/or refused to appear at the subject hearing. According to respondents' counsel, who contacted and visited with the pro se claimant by telephone on June 23, 2023, his file notes reflect the claimant advised him he no longer wished to pursue his claim, and he requested the respondents' attorney to not contact him any further about the matter.

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. After having been mailed and received due and legal notice of both the respondents' MTD and the subject hearing date, time, and place, the claimant neither inquired concerning nor objected nor responded to the motion in any way, and he did not appear, nor cause anyone to appear on his behalf, at the subject hearing. Therefore, the claimant is deemed to have waived his right to a hearing on the respondents' motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to request a hearing within the last six (6) months, and he has failed and/or refused to take any action(s) to prosecute his claim.

4. Therefore, the respondents' motion to dismiss without prejudice filed June 19, 2023, is hereby GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b), and Commission Rule 099.13.

This 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).

If they have not already done so, the respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp