

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H006782**

DWIGHT McCULLOUGH, EMPLOYEE

CLAIMANT

CITY OF MENIFEE, EMPLOYER

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED MARCH 16, 2021

Hearing before Administrative Law Judge James D. Kennedy on March 16, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by his attorney, Philip M. Wilson.

Respondents are represented by their attorney, Melisa Wood.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on March 16, 2021, in Little Rock, Arkansas, on the respondents' Motion to Dismiss for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant was represented by Philip M. Wilson, who objected to the matter being dismissed by a letter dated February 3, 2021 and stated they would not be attending the scheduled hearing. The claim involved an injury where the respondents contended that the claimant passed out on October 6, 2020, and the claim was initially accepted as compensable, but is now controverted in its entirety. Discovery was propounded to the claimant and the responses have not been completed or returned. The claimant filed a Form AR-C on or about October 28, 2020, contending the injury occurred on August 10, 2020. It has been over six (6) months since the claimant contended that the injury occurred and the claimant has not sought any type of hearing before the Arkansas Workers' Compensation Commission and has not responded to the propounded

discovery. This lack of action led to the filing of a Motion to Dismiss by the respondents on February 1, 2021.

An appropriate notice setting this matter for a hearing for a Motion to Dismiss was provided to the claimant by both certified and regular mail. A hearing was set for March 16, 2021, in regard to the Motion to Dismiss. The claimant filed the above-mentioned letter response, but failed to appear at the time of the hearing in Little Rock, Arkansas. At the time of the hearing, Melissa Wood appeared on behalf of the respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the respondent, there is no alternative but to find that this matter should be dismissed for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

ORDER

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

IT IS SO ORDERED.

**JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE**