

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H109796**

**ROGER L. MILLER,
EMPLOYEE**

CLAIMANT

**TRI-NAT'L, INC.,
EMPLOYER**

RESPONDENT

**TECHNOLOGY INSURANCE CO. /
OCCUSURE CLAIMS SERVICES, LLC
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED AUGUST 23, 2022**

Hearing conducted on Tuesday, August 23, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Roger L. Miller, pro se, of Cabot, Lonoke County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Jason A. Lee, Gill Ragon Owen, P.A., Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, August 23, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.).

The respondents filed a motion to dismiss and brief in support thereof with the Commission on June 22, 2022, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed and received due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at his last known address of record with the Commission via the United States Postal Service (USPS), First Class, Certified Mail, Return Receipt Requested on or about June 30, 2022. Thereafter, the

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claimant failed and/or refused to respond to the respondents' motion in any way, or to cause anyone to do so on his behalf. Moreover, the claimant failed and/or refused to appear at the scheduled 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 demonstrates the claimant has failed and/or refused to prosecute his claim. It appears from the preponderance of the evidence of record the claimant has either moved and/or abandoned the subject claim.

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 proper legal notice of the respondents' motion to dismiss, as well as of the subject hearing, the claimant failed and/or refused to respond to the motion in any way. Moreover, the claimant failed and/or refused to appear at the hearing, or to cause anyone to appear on his behalf. The preponderance of the evidence of record reveals the claimant has either moved and/or abandoned the subject claim. Therefore, he is deemed to have waived his right to appear at the hearing, and to have waived objection to the respondents' motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to prosecute his claim. In addition, the claimant has failed and/or refused to request a hearing within the last six (6)

months.

4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on June 22, 2022, 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 ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp