

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G902939**

JUAN C. MONTES, EMPLOYEE

CLAIMANT

TYSON POULTRY INC., SELF- INSURED EMPLOYER

RESPONDENT

OPINION/ORDER FILED **NOVEMBER 15, 2021**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

Claimant appearing *pro se*.

Respondent is represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas

OPINION/ORDER

On November 2, 2021, the above styled matter came before me for a hearing on the merits of the case. After claimant announced he did not wish to proceed, respondent requested that a Motion to Dismiss which had been filed on August 26, 2020, now be considered. The history of this matter will be set out below, as it is relevant to my decision to grant the Motion to Dismiss fourteen months after it was filed.

This claim began on May 8, 2019, when an AR-C form was filed by claimant, alleging an injury to his right upper extremity on April 23, 2019. At that time, claimant was represented by Mr. Michael Ellig. Mr. Ellig was allowed to withdraw from representing claimant on March 11, 2020 and since that time, claimant has been unrepresented.

On August 3, 2021, claimant appeared before me on a separate claim (G903681) in which he alleged an injury to his left hand on November 28, 2018. I found that matter was barred by the Statute of Limitations and entered an Opinion dismissing that claim on September 7, 2021. As we had an

interpreter available at the hearing on August 3, 2021, an in-person prehearing conference on the instant claim was conducted on that day. This matter was set for a hearing on November 2, 2021.

As reflected in the record, claimant made statements before the hearing began that he did not want to proceed with the hearing as scheduled. Once we went on the record, claimant repeated his decision not to present his claim without an attorney. According to claimant, he had tried to get an attorney since Mr. Ellig had withdrawn from the case in March 2020, but he had been unable to find a lawyer to take his case. I advised claimant that if he was going to employ an attorney, he had had ample time to find one following the withdrawal of Mr. Ellig. Claimant stated that the attorneys he talked to told him his case was not worth a cent.

At that point in the proceeding, respondent's attorney pointed out that a Motion to Dismiss was still pending in this case. The motion filed on August 26, 2020; on September 24, 2020, claimant let the Commission know that he chose to move forward with his claim, and the Motion was held in abeyance by Judge Eric Wells. As claimant announced at the hearing on November 2, 2021 that he did not wish to proceed, respondents asked that their Motion to Dismiss now be considered. After respondent made its argument in favor of its Motion to Dismiss, claimant was given an opportunity to respond, but instead of addressing the motion, claimant instead asked if he was free to go. I told him he was, and claimant left the courtroom.

It had been a little over fourteen months since respondents requested that this case be dismissed for want of prosecution and over thirteen months since claimant had advised the Commission that he wished to proceed with his claim. Respondent's attorney advised me (before claimant left the courtroom) that claimant had seen a doctor during 2021 and respondent had accepted that medical claim, paying benefits to the medical provider. Upon hearing that, I advised claimant as follows: "What Mr. Zuerker has told the Court, and I am going to believe him, is that

Montes – G902939

you have gone to the doctor this year on your elbow and Tyson has paid for it. If that is the case, you have one year from the last time you saw the doctor to bring this case again if it is dismissed today.” I based this observation on the recent case of *Wynne v. Liberty Trailer, 2021 Ark. App. 374*.

Given claimant’s unwillingness to proceed to a full hearing on November 2, 2021, I believe the motion filed on August 26, 2020, should now be ruled upon. At the time that motion was filed, it had been more than six months since there had been any activity in the file. Under the circumstances, including the fact that this claim will not be barred by the statute of limitations for indemnity benefits and payment for medical treatment, I find respondent’s Motion to Dismiss that was filed August 26, 2020 is proper, and should be granted. This dismissal is without prejudice.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE