

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G705583**

**CLYDE R. MILLER, EMPLOYEE**

**CLAIMANT**

**FIRST BAPTIST CHURCH, EMPLOYER**

**RESPONDENT NO. 1**

**GUIDEONE MUTUAL INS. CO.,  
CARRIER/TPA**

**RESPONDENT NO. 1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED AUGUST 4, 2022**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in McGehee, Desha County, Arkansas.

Claimant, Mr. Clyde R. Miller, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Zachary Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on July 28, 2022, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the July 28, 2022, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference.

**DISCUSSION**

Claimant alleged that he sustained an injury to his back and hand on November 27, 2016, while working for the Respondent-Employer.

On August 11, 2017, Respondents No. 1 filed a Form AR-2 with the Commission accepting the claim as compensable.

On September 15, 2017, Claimant's previous counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of November 27, 2016, and alleged the following: "Claimant slipped on water on the last step of the stairs, claimant sustained injuries to his back, hand and other whole body." On the Form AR-C, Claimant asserted his entitlement to initial and additional workers' compensation benefits.

On November 15, 2019, Claimant's counsel filed a motion to withdraw as attorney of record, and the Full Commission granted the request on December 6, 2019.

On April 28, 2022, Respondents No. 1 filed with the Commission a Motion to Dismiss for failure to prosecute. On May 10, 2022, the Commission sent a Notice to Claimant advising him of Respondents No. 1's Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated June 7, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents No. 1's Motion to Dismiss. Said hearing was scheduled for July 28, 2022, at 1:30 p.m., at the McGehee Criminal Justice Facility Courtroom, 2412 US-65 North, McGehee, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested-- and First-Class Mail. The Certified Mail was

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returned to the Commission on June 13, 2022. The First-Class Mail was not returned. There was no response from the Claimant regarding the hearing notice.

Therefore, a hearing was in fact conducted as scheduled on Respondents No. 1's Motion to Dismiss for failure to prosecute. Respondents No. 1 appeared through their attorney. Respondent No. 2, having no objection to the Motion to Dismiss, waived appearance at the hearing on the Motion. However, the Claimant failed to appear at the hearing.

Counsel advised that Respondents No. 1 had accepted the claim as compensable and that all appropriate benefits had been paid. Counsel also advised that a Form AR-C was filed on September 15, 2017, for an injury that occurred on November 27, 2016. Since Claimant's counsel was allowed to withdraw from representation on December 6, 2019, there have been no efforts to further prosecute the claim. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been approximately four (4) years and eleven (11) months years since the Claimant filed a Form AR-C in this matter, and counsel for Respondents No. 1 advised that all appropriate benefits had been paid (with the last payment of benefits in October of 2017). Further, to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim further. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents No. 1's motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code

Ann. § 11-9-702 and Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 11, 2017, Respondents No. 1 filed a Form AR-2 with the Commission, which indicated that Respondents No. 1 accepted the claim as compensable and paid benefits.
3. On September 15, 2017, Claimant's previous counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of November 27, 2016, and asserted his entitlement to initial and additional workers' compensation benefits.
4. On April 28, 2022, Respondents filed with the Commission a Motion to Dismiss for failure to prosecute.
5. Approximately four (4) years and eleven (11) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers' compensation benefits.
6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
7. Respondents No. 1's Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents No. 1's Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.

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9. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**