

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H007116**

**JAMES T. NELSON,  
EMPLOYEE**

**CLAIMANT**

**AFFORDABLE ROOTER SERVICE, LLC,  
EMPLOYER**

**RESPONDENT**

**UNITED FIRE & CASUALTY CO./  
UNITED FIRE GROUP  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED JUNE 7, 2021**

Hearing conducted on Thursday, June 3, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. James T. Nelson, pro se, of Bryant, Saline County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Jarrod Parrish, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted Thursday, June 3, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Replacement). On April 23, 2021, the respondents filed a motion to dismiss with the Commission, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was mailed due and legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice, via United States Postal Service (USPS) First Class Certified Mail, Return Receipt Requested, to his last known address of record with the Commission. Thereafter, the claimant failed and/or refused to file any response to

the respondents' motion to dismiss, either via email, USPS, or any other medium of communication. He also failed and/or refused to appear at the hearing, or to cause anyone to appear on his behalf.

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 filed April 23, 2021. 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.

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. The claimant failed and/or refused to either file a response to the respondents' motion to dismiss, to appear at the scheduled hearing, or to cause anyone to appear on his behalf. Therefore, the claimant is deemed to have waived his right to, and appearance at, the subject hearing.
3. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute his claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on April 23, 2021, is GRANTED; and this claim hereby 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 else acting legally and on his behalf, from refileing the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents are hereby 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