

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H203380**

**JUAN R. NIEVES,  
EMPLOYEE**

**CLAIMANT**

**A B M INDUSTRIES, INC.,  
EMPLOYER**

**RESPONDENT**

**INDEMNITY INS. CO. Of NORTH AMERICA/  
ESIS, INC.  
CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER FILED MAY 25, 2023, TO HOLD RESPONDENTS' MOTION  
TO DISMISS WITHOUT PREJUDICE IN ABEYANCE FOR 30 DAYS**

Hearing conducted on Wednesday, May 24, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Juan R. Nieves, pro se, of Little Rock, Pulaski County, Arkansas, appeared at the hearing.

The respondents were represented by the Honorable Eric Newkirk, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Wednesday, May 24 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Replacement).

On April 3, 2023, the respondents filed with the Commission a motion to dismiss without prejudice (MTD) for lack of prosecution. Thereafter, pursuant to the applicable law and in advance of the hearing the claimant was mailed a copy of the respondents' MTD and the subject hearing notice. The claimant, Mr. Juan R. Nieves, appeared in person at the hearing. He advised he did in fact intend to pursue his claim; he was willing to cooperate with the respondents' in completion of

necessary and appropriate discovery including but not limited to his sworn deposition testimony; and that he would file a response to the prehearing questionnaire, as he did not recall receiving this document. In addition, both the claimant and the respondents' attorney agreed that, presuming they were able to resolve a possible medical lien issue, they expected the claim may be settled via a joint petition settlement agreement in due course.

Consequently, both the claimant and the respondents' attorney agreed in requesting the ALJ hold in abeyance a decision on the respondents' MTD filed April 3, 2023, for a period of 30 days, or until Friday, June 23, 2023. The parties will advise the ALJ on or before this date – Friday, June 23, 2023 – as to whether any and all issues have been resolved, or if the claimant wishes to proceed to a hearing. If the issues have *not* been resolved, the parties may request additional time to resolve them, if needed, or may ask for any and all other appropriate Commission action or relief as may be necessary.

If any and all outstanding issues have *not* been resolved as expected by Friday, June 23, 2023, and the claimant advises he wishes to proceed to a hearing, he shall file his prehearing questionnaire response in a timely manner. If the claimant fails to cooperate with the respondents in the discovery process; or if he fails to file a timely response to the prehearing questionnaire the ALJ will draft and enter an opinion and order of dismissal without prejudice without the necessity of the respondents' having to draft and file another motion, and without the necessity of the ALJ conducting another hearing on the respondents' MTD.

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 reveals the claimant has failed and/or refused to prosecute his claim at this time.

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 due and legal notice of both the respondents' MTD and the subject hearing date, time, and place, the claimant appeared in person, pro se, at the hearing.
3. The claimant advised on the record he wished to pursue his claim.
4. The ALJ shall hold in abeyance a decision on the respondents' subject motion to dismiss without prejudice for a period of 30 days, or until Friday, June 23, 2023.
5. The parties have 30 days from the hearing date, or until Friday, June 23, 2023, to obtain any and all additional information they require and to resolve the aforementioned issues.
6. The parties shall advise the ALJ on or before Friday, June 23, 2023, whether the subject issues have been resolved. If the parties have *not* resolved the issues by the agreed deadline they may request additional time to do so, or may request any and all other Commission action and/or relief as may be deemed necessary and appropriate under the circumstances.
7. Moreover, if any and all outstanding issues have *not* been resolved to the parties' satisfaction by Friday, June 23, 2023, the claimant shall file his response to the prehearing questionnaire in a timely manner. If he fails to do so, or if he fails to cooperate with the respondents in the discovery process, the ALJ shall draft and file an opinion and order granting the respondents MTD without prejudice, and may do so without the necessity of either the respondents filing another motion, and without the necessity of the Commission holding another hearing on the motion.

If they have not already done so, the respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp

