

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H400898**

**WAYLON L. OSBORN, EMPLOYEE**

**CLAIMANT**

**PENMAC STAFFING SERVICES, INC., EMPLOYER**

**RESPONDENT**

**AIU INSURANCE CO., CARRIER/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 23, 2024**

**Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Arkansas on October 15, 2024.**

**Claimant is pro-se and appeared at the hearing.**

**Respondents are represented by their attorney, Rick Behring, Jr., of Little Rock, Arkansas, who appeared on their behalf.**

**STATEMENT OF THE CASE**

A hearing was held in the above styled matter on October 15, 2024, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Ann. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant did appear at the time of the hearing and stated that he wished to pursue his claim. A First Report of Injury was filed on February 6, 2024, providing that the claimant felt foot pain as he walked from one machine to another on November 1, 2023, and that his employer was notified on January 19, 2024, with the claimant contending that he injured both of his feet. An AR – 2 was filed on February 7, 2024, and it provided that the claim is denied since there is no medical evidence of bilateral foot pain. A Form AR – C was filed on February 19, 2024, by claimant's attorney at the time, which provided that the claimant had injured his ankle. Claimant's attorney was allowed to withdraw on June 25, 2024, by an Order of the Full Commission. A Motion to Dismiss

for Failure to Prosecute was then filed on August 22, 2024. The Motion to Dismiss contends that the claimant has taken no action to prosecute his claim and that consequently, the matter should be dismissed for lack of prosecution pursuant to Commission Rule 099.13 and A.C.A. 11-9-702. The claimant admitted that he had not filed a response to the Motion to Dismiss but stated that he intended to pursue his claim.

In regard to the issue of dismissing the claim per the respondents' Motion to Dismiss, A.C.A. 11-9-702 (a) (4) provides that if within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may** (emphasis added) upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a) (1) – (3) of this section. Here the claimant appeared at the time of the hearing and unequivocally stated that he intended to pursue his claim in regard to his injuries. Based upon the claimant's appearance and his statement that he intended to pursue his claim, it is found that there is no basis to dismiss the claim at this current time.

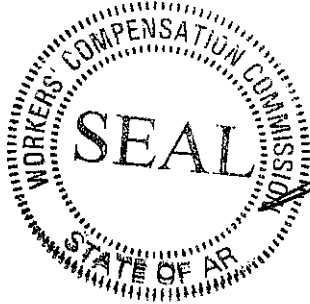
It is noted that appropriate notice was provided to the claimant notifying him of the hearing and that he was in fact present. It is also noted that the claimant has failed to respond to the Respondents propounded discovery.

### **ORDER**

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of Respondent's attorney and the statements of the Claimant, there is no alternative but to find that that this matter should not be dismissed at this time. In addition, the Claimant is ordered to

respond to the propounded discovery within thirty (30) days of the receipt of the discovery.

IT IS SO ORDERED.



*James D. Kennedy*  
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JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE