

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: G903915**

SHAWN PALMER,  
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER, CO.,  
SELF-INSURED EMPLOYER

RESPONDENT NO. 1

CENTRAL ADJUSTMENT COMPANY, INC.,  
THIRD PARTY ADMINSTRATOR (TPA)

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND

RESPONDENT NO. 2

**OPINION FILED JANUARY 18, 2022**

Hearing before Administrative Law Judge Chandra L. Black in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, appeared for the hearing.

Respondents No. 1 represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

**Statement of the Case**

A second hearing was held on January 12, 2022 in the present matter pursuant to the provisions of Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Arkansas Code Annotated §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

The Commission attempted appropriate notice of the hearing on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the January 12, 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 herein by reference. The transcript of the prior hearing of August 18, 2021 has also been made a part of the record. It is retained in the Commission’s general files.

### **Procedural History**

On June 28, 2019 the Claimant’s attorney filed with the Commission, a claim for workers’ compensation benefits by way of a Form AR-C. Per this document, the Claimant alleged an injury date of August 28, 2009. Specifically, counsel basically asserted that “Claimant sustained injuries to multiple body parts including his back, spine and legs.” Counsel for the Claimant checked off all the boxes for both initial and additional benefits.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on June 19, 2019 accepting the claim. Specifically, the carrier wrote: “Claim accepted as compensable. Benefits being paid.”

However, on March 13, 2020, the Claimant’s attorney filed a Motion to Withdraw as Counsel. On May 20, 2020, the Full Commission entered an order granting the motion relieving the Claimant’s attorney as counsel of record in this claim.

Since the filing of the Form AR-C, there has been no action taken by the Claimant to prosecute his claim.

As a result, on June 21, 2021, Respondents No. 1 filed a Respondents’ Motion to Dismiss, with the Commission. Said motion was accompanied by a Certificate of Service to the Claimant.

The Commission sent a Notice to the Claimant on June 23, 2021, apprising him of the motion, and a deadline of July 14, 2021 for filing a written response.

There was no response from the Claimant.

Pursuant to a Hearing Notice dated July 15, 2021, the Commission notified the parties that the matter had been set for a hearing on Respondents No. 1's motion for dismissal of this claim due to a lack of prosecution. Said hearing was scheduled for on August 18, 2021, at 10:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

A hearing was in fact conducted on the Respondents No. 1's motion to dismiss as scheduled. Respondent No.1 appeared through their attorney. Counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, she moved that the claim be dismissed due to a lack of prosecution. The Claimant appeared and objected to his claim being dismissed. Specifically, the Claimant essentially confirmed that he continues to receive pain management benefits for his compensable back injury. However, the Claimant indicated that he needs sixty (60) days to obtain legal counsel in this matter.

In light of the Claimant's appearance at the hearing to object to his claim being dismissed; and because the Claimant indicated he wished to prosecute his claim, pursuant to my Opinion dated August 20, 2021, I respectfully denied Respondents No. 1's motion to dismiss.

However, since this time, the Claimant has failed to prosecute his claim. There has been no action whatsoever taken by the Claimant to prosecute or otherwise resolve his claim.

Therefore, on October 22, 2021, Respondents No. 1 filed a Respondents' Renewed Motion to Dismiss, with a Certificate of Service to the Claimant.

The Commission sent a Notice to the Claimant on October 29, 2021, apprising him of the motion, and a deadline of November 19, 2021 for filing a written response.

However, there has been no response from the Claimant. This notice was returned to the Commission by the United States Postal Service marked, "Unclaimed."

As a result, per a Hearing Notice dated November 30, 2021, the Commission notified the parties that the matter had been set for a hearing on Respondents No. 1's motion for dismissal of this claim due to a lack of prosecution. Said hearing was scheduled for on January 12, 2022 at 11:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

However, there has been no response from the Claimant. Hence, said notice was returned to the Commission by the United States Postal Service marked, "Unclaimed."

A second hearing was in fact conducted on the Respondents No. 1's renewed motion to dismiss as scheduled on January 12, 2022. Respondents No.1 appeared through their attorney. Counsel essentially noted, among other things, that the Claimant has failed to timely prosecute his claim for workers' compensation benefits since the last hearing. As such, counsel moved that the claim be dismissed due to a lack of prosecution.

#### **Discussion**

A review of the evidence shows that the Claimant has had a chance to pursue this claim; but he has failed to do so. The Claimant also failed to respond to the written notices of this Commission; and he did not appear at the second hearing to object to the dismissal of his claim. Moreover, the Claimant has not requested a hearing on his claim since the filing of the Form AR-C, which was done more than six months ago. During the first dismissal hearing of August 18, 2021, the Claimant was given sixty (60) days to be ready to prosecute his claim. More than sixty (60) days have passed, and the Claimant has made no attempt whatsoever to prosecute or otherwise resolve his claim. In fact, the Claimant has not responded to the notices of this Commission, and he failed to appear at the most recent hearing to object to his claim being dismissed.

Hence, the evidence before me proves that the Claimant has abandoned his claim for workers' compensation benefits. Therefore, based on my review of the documentary evidence, and

all other matters properly before the Commission, I find that Respondents No. 1's renewed motion to dismiss this claim should be granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13. Hence, this claim is hereby respectfully dismissed without prejudice, to the refiling of it within the limitation period specified by law.

**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 Arkansas Code Annotated. §11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Reasonable notice of the hearing on the Respondents' Renewed Motion to Dismiss was tried on all the parties.
3. The evidence preponderates that the Claimant has failed to prosecute his claim under the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13.
4. The renewed motion for dismissal is hereby granted pursuant to the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, this claim is hereby respectfully dismissed, without prejudice, to the refiling within the limitation period specified by law.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**