

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H203255**

**DAVID K. PENNY,
EMPLOYEE**

CLAIMANT

**JAMES M. BOZEMAN, LLC
EMPLOYER**

RESPONDENT

**LUBA CASUALTY INS. CO.,
LUBA INSURANCE
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JULY 27, 2023**

Hearing conducted on Tuesday, July 26, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant is represented by the Honorable Sherri R. Arman, Lane, Muse, Arman & Pullen, Hot Springs, Garland County, Arkansas, waived appearance at the hearing.

The respondents were represented by the Honorable Carol Lockard Worley, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, July 26, 2023, 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 (2023 Lexis Replacement).

The respondents filed a motion to dismiss with the Commission on April 10, 2023, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant and his attorney of record were mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at their current addresses of record. The claimant's attorney advised both the Commission and the respondents'

attorney in writing the claimant had no objection to the respondents' motion to dismiss without prejudice, and waived appearance at the subject hearing. (Commission Exhibit 1).

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 not prosecuted 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 received due and legal notice of the respondents' motion to dismiss, as well as due and legal notice of the subject hearing, the claimant's attorney advised both the Commission and the respondents' attorney in writing the claimant had no objection to the respondents' motion to dismiss without prejudice, and waived appearance at the subject hearing.
3. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on April 10, 2023, should be and hereby is GRANTED; and this claim 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 acting legally and on his behalf from refiling the

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claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents shall 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