

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H108372**

**DOUGLAS PRICE,  
EMPLOYEE**

**CLAIMANT**

**UTILITY TRI-STATE, INC.,  
EMPLOYER**

**RESPONDENT**

**TRAVELERS INDEMNITY CO. OF CONNECTICUT/  
TRAVELERS INDEMNITY CO.  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED DECEMBER 7, 2022**

Hearing conducted on Wednesday, December 7, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Douglas Price, pro se, of Rose Bud, White County, Arkansas, voluntarily waived his appearance at the hearing via email.

The respondents were represented by the Honorable Guy, Alton Wade, Friday, Eldredge & Clark, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Wednesday, November 7, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.). The respondents filed a letter motion to dismiss with the Commission on October 14, 2022, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of both the respondents' motion to dismiss, as well as a copy of the hearing notice at his current addresses of record via the United States Postal Service (USPS), First Class Certified Mail,

Return Receipt Requested. Thereafter, the claimant responded to the ALJ's office via email dated Thursday, November 10, 2022, at 1:14 p.m. advising as follows: " I would like to request a dismissal from my workers' compensation claim as I have received an appropriate settlement from the insurance company." In this same email, the claimant requested he "be excused from the hearing," and his request was granted. (*See Commission's File*).

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, by reference.

### **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 demonstrates the claimant has neither requested a hearing made an informed decision not to pursue this 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. 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 responded via email to the ALJ's office advising he agreed with the respondents, as he wished his claim be dismissed, and he requested waiver of his appearance at the hearing, which was granted. Therefore, the claimant hereby is deemed to have voluntarily and in writing waived his right to a hearing on the respondents' motion to dismiss. Furthermore, the claimant specifically and in writing agreed with the respondents' motion that his claim should be dismissed.

3. Therefore, the respondents' letter motion to dismiss without prejudice filed with the Commission on October 14, 2022, 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 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 ten (10) days of their receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp