

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G902078**

**FERMON REYNOLDS,
EMPLOYEE**

CLAIMANT

**API GROUP, INC.,
EMPLOYER**

RESPONDENT NO. 1

**NEW HAMPSHIRE INS. CO./
ESIS, INC.
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

**STATE OF ARKANSAS, DEATH & PERMANENT
TOTAL DISABILITY TRUST FUND**

RESPONDENT NO. 2

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JUNE 7, 2021**

Hearing conducted on Wednesday, January 13, 2021, 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 Scott Hunter, Jr., Hunter Law Firm, P.A., Jonesboro, Pulaski County, Arkansas, who waived appearance at the hearing.

Respondent No. 1 was represented by the Honorable Eric Newkirk, Mayton, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

Respondent No. 2 is represented by the Honorable David L. Pake, who waived appearance at the hearing.

STATEMENT OF THE CASE

A hearing was conducted on Friday, June 4, 2021, 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 (2020 Lexis Replacement). On April 30, 2021, Respondent No. 1 filed a motion to dismiss and brief in support thereof with the Commission, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant and his attorney were mailed due and legal notice of Respondent No. 1's motion to dismiss and brief in support thereof, as well as a copy of the hearing notice. Thereafter, the claimant's attorney waived both his and the claimant's appearance at the hearing. Likewise, Respondent No. 2's attorney waived appearance at the hearing.

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 Respondent No. 1's 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 failed and/or refused to prosecute his 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 Respondent No. 1's motion to dismiss, the claimant's attorney waived both his and the claimant's appearance at the hearing.
3. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute his claim.
4. Therefore, the Respondent No. 1's motion to dismiss without prejudice filed with the Commission on April 30, 2021, is GRANTED; and this claim hereby 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 else 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).

Respondent No. 1 hereby is ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge