

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H400450**

RAYMOND ROSARIO,  
EMPLOYEE CLAIMANT

ALTER TRADING, INC.,  
EMPLOYER RESPONDENT

ARCH INDEMNITY INSURANCE, CO., /GALLAGHER  
BASSETT SERVICES, INC./INSURANCE CARRIER/THIRD  
PARTY ADMINISTRATOR(TPA) RESPONDENT

**OPINION FILED DECEMBER 20, 2024**

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

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on December 19, 2024, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702, and/or Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

No testimony was taken.

The record consists of the transcript of December 19, 2024, hearing and the documents held therein. The Commission's Exhibit consists of two pages, which were provided to the Commission by the United States Postal Service. It was marked accordingly. The Respondents'

Exhibit 1 consists of nine (9) numbered pages of pleadings, correspondence, and various other forms related to this claim.

### **Procedural History**

On January 22, 2024, the Claimant filed with the Commission a claim for Arkansas workers' compensation benefits via a Form AR-C. Per this document, the Claimant alleged that he sustained injuries during the course and in the scope of his employment with the respondent-employer, on December 20, 2023, while unlatching a semi-trailer. The Claimant requested both initial and additional benefits. In fact, he checked off all the boxes for every conceivable workers' compensation benefit under the law.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on January 30, 2024. Per this form, the Respondents accepted this claim as a compensable medical only claim.

On or about February 28, 2024, the Claimant requested a change of physician. However, the Claimant failed to provide the Medical Cost Containment Division with the name of a physician that he wished to see for his one-time change of physician request. My review of the file demonstrates that multiple emails were sent to the Claimant in this regard without a response. As a result, the file was returned to the Commission's general files on July 9, 2024.

Since this time, the Claimant has not tried to pursue or otherwise resolve his claim, nor has he made a bona fide request for a hearing since the filing for the Form AR-C.

Therefore, on October 18, 2024, the Respondents filed a *Motion to Dismiss for Failure to Prosecute*, with the Commission, along with a Certificate of Service to the Claimant. Hence, the Respondents mailed a copy of said motion to the Claimant via the United States Postal Service.

The Commission sent a letter to the Claimant on October 22, 2024, informing Claimant of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said

letter was mailed to the Claimant by both first-class and certified mail. Per information received from the United States Postal Service, the letter notice mailed to the Claimant via certified mail was left at the Claimant's last known address listed with the Commission with an individual by the name of Kyle Watson, on November 5. However, the letter sent by first-class mail has not been returned to the Commission.

Thus far, there has been no response from the Claimant.

Pursuant to a Hearing Notice dated November 14, 2024, the Commission notified the parties that the matter had been set for a hearing on the Respondents' motion to dismiss. Said hearing was scheduled for December 19, 2024, at the Arkansas Workers' Compensation Commission in Little Rock, Arkansas.

Said notice was mailed to the Claimant by both first-class and certified mail. Per information received from the United States Postal Service, the letter notice mailed to the Claimant via certified mail was left at the Claimant's last known address listed with the Commission with an individual by the name of Kyle Watson, on November 18. However, the letter sent by first-class mail has not been returned to the Commission. Based on the information provided by the Postal Service, I find the Claimant received proper notice of the hearing.

Still, there was no response from the Claimant.

Nevertheless, the hearing was held as scheduled. The Claimant did not appear at the hearing. The Respondents' counsel appeared at the hearing and argued that the Claimant has failed to prosecute his claim for workers' compensation benefits. More specifically, the Respondents' counsel noted that the Claimant has not taken any action to advance his claim since the filing of the Form AR-C, which was done almost a year ago. He further essentially noted that the Claimant has not taken any affirmative action to resist his claim being dismissed.

Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13 *without prejudice* on this claim for both initial and additional workers' compensation benefits.

### **Adjudication**

The statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4):

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, 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.

Additionally, Ark. Code Ann. §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim for workers' compensation benefits since the filing of the Form AR-C, almost a year ago; and nor has he resisted the motion for dismissal of his workers' compensation claim.

Here, the evidence preponderates that the Claimant has failed to prosecute this claim for workers' compensation benefits. Moreover, I am convinced that the Claimant has abandoned this claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, this claim for workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

**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 Ark. Code Ann. §11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
4. The Respondents' motion to dismiss this claim for lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, *without prejudice* to the refileing of this claim within the limitation period specified under the Act.

**IT IS SO ORDERED.**

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**Chandra L. Black**  
**Administrative Law Judge**