

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G900945**

**SCOTT ROSENQUIST,
EMPLOYEE**

CLAIMANT

**GOOD SAMARITAN CEDAR LODGE,
EMPLOYER**

RESPONDENT NO. 1

**SENTRY INSURANCE, A MUTUAL CO.
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 FEBRUARY 9, 2021**

Hearing conducted on Tuesday, February 9, 2020, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Scott Rosenquist, *pro se*, of Hot Springs Village, Garland County, Arkansas, failed and/or refused to appear at the hearing.

Respondent No. 1 was represented by the Melissa Wood, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

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

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, February 9, 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 December 30, 2020, Respondent No. 1 filed a motion with the Commission requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with the applicable Arkansas law, the claimant was mailed and received due and legal notice of Respondent No. 1's motion to dismiss, as well as a copy of the hearing notice, via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, on January 30, 2021, as is evidenced by the signature on the return receipt, a copy of which was introduced into evidence at the hearing as Commission Exhibit 1. (Commission Exhibit 1).

Thereafter, the claimant failed and/or refused to file any response to Respondent No. 1's motion to dismiss, either via email, USPS, or any other medium of communication. He also failed and/or refused to appear at the hearing, or to cause anyone to appear on his behalf.

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 reveals 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 December 30, 2020, motion to dismiss without prejudice, as well as a copy of the hearing notice via USPS First Class Certified Mail, Return

Receipt Requested, the claimant failed and/or refused to either file a response to the respondent's motion to dismiss, or to appear at the hearing. Consequently, the claimant is deemed to have waived his appearance at and right to 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, Respondent No. 1's motion to dismiss without prejudice filed December 30, 2020, 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 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

MP/mp