

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H201954**

**RICHARD ROSE, EMPLOYEE**

**CLAIMANT**

**RICH TRANSPORT, INC., EMPLOYER**

**RESPONDENT**

**ARKANSAS TRUCKING ASSOCIATION  
SI FUND/CCMSI, CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 30, 2022**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Richard Rose, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Guy A. Wade, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on September 28, 2022, 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 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.

The record consists of the transcript of the September 28, 2022, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference. Respondents submitted an exhibit packet consisting of twelve (12) pages, including: the Form AR-C; the Respondents' letter motion to dismiss; the Respondents' counsel's entry of appearance; the Respondents' letter regarding discovery; the Claimant's attorney's request to withdraw as counsel; the Commission's notice to Claimant of his

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attorney's request to withdraw; the Full Commission's Order granting the request to withdraw; communication from the Claimant's previous counsel regarding her withdrawal from the claim; the Notice to the Claimant regarding Respondents' letter motion to dismiss; and the Notice of Hearing. The packet was labeled as Respondents' Exhibit No. 1 and was admitted into evidence.

### **DISCUSSION**

The Claimant alleged that he sustained an injury to his left hip, right shoulder, and other whole body on February 2, 2022, while working for the Respondent-Employer.

On March 7, 2022, Respondents filed a Form AR-2 with the Commission controverting the claim as the Claimant was not injured during the course and scope of his employment.

On April 1, 2022, the Claimant requested a hearing on the claim. When the Claimant failed to timely respond to the Legal Advisor Questionnaire, the claim was returned to the Commission's general files.

On June 18, 2022, Claimant's previous counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of February 2, 2022, and alleged the following: "During the course and scope of his employment, Mr. Rose suffered injuries to his left hip, right shoulder, and other whole body." On the Form AR-C, Claimant asserted his entitlement to initial and additional workers' compensation benefits.

On June 28, 2022, Claimant's counsel filed a motion to withdraw as attorney of record, and the Full Commission granted the request on July 8, 2022.

On July 13, 2022, Respondents filed with the Commission a letter motion to dismiss. On July 18, 2022, the Commission sent a Notice to Claimant advising him of Respondents' letter

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motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated August 10, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' letter motion to dismiss. Said hearing was scheduled for September 28, 2022, at 1:30 p.m., at the Arkansas Workers' Compensation Commission, 324 South Spring Street, Hearing Room B, Little Rock, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested-- and First-Class Mail. United States Postal Service records indicated that the Certified Mail was delivered on August 13, 2022, at 1:39 p.m., and a signature was obtained. There was no response from the Claimant regarding the hearing notice.

Therefore, a hearing was in fact conducted as scheduled on Respondents' letter motion to dismiss for failure to prosecute. Respondents appeared through their attorney. However, the Claimant failed to appear at the hearing.

Counsel advised that the Respondents had denied the claim and that no benefits were paid to the Claimant for his alleged injuries to his left hip and right shoulder. Respondents' counsel asserted that the Claimant had not responded to discovery and had not appeared for the hearing. Since the Claimant's previous counsel filed a Form AR-C on June 18, 2022, the Claimant had not taken further action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here the Claimant's alleged work-related injury occurred on

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February 2, 2022, for which he filed a Form AR-C on June 18, 2022, with the Commission. Soon thereafter, on July 8, 2022, his attorney's motion to withdraw was granted. There has been no response from the Claimant since that time, and the Claimant did not appear at the dismissal hearing.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss this claim to be well supported. Furthermore, I find that pursuant to Commission Rule 099.13, this claim for benefits should be dismissed for failure to prosecute. The dismissal is without prejudice.

#### **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 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 7, 2022, Respondents filed a Form AR-2 with the Commission controverting the claim as the Claimant was not injured during the course and scope of his employment.
3. On April 1, 2022, the Claimant requested a hearing on the claim; however, the matter was returned to the Commission's general files when the Claimant failed to complete the Legal Advisor Questionnaire.
4. On June 18, 2022, Claimant's previous counsel filed a Form AR-C with the Commission asserting his entitlement to initial and additional workers' compensation benefits.
5. On June 28, 2022, Claimant's counsel filed a motion to withdraw as attorney of record, and the Full Commission granted the request on July 8, 2022.
6. On July 12, 2022, Respondents filed with the Commission a letter motion to dismiss.

7. The Claimant has had sufficient time to pursue his claim for workers' compensation benefits. Here, Claimant's alleged work-related injury occurred on February 2, 2022, and the Claimant filed a written request for a hearing on March 28, 2022. The matter was returned to the Commission's general files when the Claimant failed to complete the Legal Advisor Questionnaire. Thereafter, Claimant's previous counsel filed a Form AR-C on June 18, 2022, with the Commission. Claimant's attorney was allowed to withdraw from representation on July 8, 2022, and since that time, the Claimant has failed to prosecute his claim for workers' compensation benefits.
8. Respondents' letter motion to dismiss for failure to prosecute is well founded.
9. Respondents' letter motion to dismiss for failure to prosecute should be granted pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.
10. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Commission Rule 099.13 for failure to prosecute. This dismissal is without prejudice.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**