BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H507251

JAMES W. RUSHING,
EMPLOYEE **CLAIMANT**

MILBANK MFG. CO., INC.,
EMPLOYER **RESPONDENT**

ACE AMERICAN INS. CO./CHUBB GRP. OF INS COS.
CARRIER/TPA **RESPONDENT**

OPINION FILED AUGUST 14, 2026
GRANTING RESPONDENTS' MOTION TO DISMISS WITHOUT PREJUDICE

Hearing conducted on Thursday, August 13, 2026, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in El Dorado, Union County, Arkansas.

The claimant, Mr. James Rushing, pro se, of El Dorado, Union County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Rick Behring, Jr. (for the Honorable David C. Jones), Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on August 13, 2026, to determine whether this claim should be dismissed without prejudice pursuant to ***Ark. Code Ann.*** § 11-9-702(a)(4) (2025 Lexis Replacement) and 11 ***CAR*** Section 25-110(d) (2025 ***Code of AR Regulations***), formerly cited as Commission Rule 099.13 (2025 Lexis Repl.)

After the AR-C in this claim was filed with the Commission on November 5, 2025, on December 12, 2025, the respondents propounded upon the claimant interrogatories and requests for production of documents. (Respondents' Exhibit 1 at 8-25). The claimant failed and/or refused to timely respond in any way to these routine and appropriate discovery requests, and he still had not responded to them as of the date of the subject hearing. (Reporter's Hearing Transcript).

On June 16, 2026, the respondents filed with the Commission a motion to dismiss this claim with or without prejudice for lack of prosecution and incorporated brief (MTD), and forwarded a copy of this MTD to the claimant along with an explanatory cover letter. (RX1 at 19-27). The claimant was provided due and legal notice of both the respondents' MTD as well as the date, time, and place of the subject hearing; however, he failed and/or refused to either respond to the respondents' MTD in any way and/or refused to appear at the subject hearing. (Commission Exhibit 1; RX1 at 29-30).

The record herein consists of the hearing transcript and any and all exhibits contained therein or attached thereto.

DISCUSSION

Consistent with ***Ark. Code Ann.***§ 11-9-702(a)(4) (2025 Lexis Replacement), 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' MTD filed May 1, 2026. 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 either actively prosecute his claim or to request a hearing within the last six (6) months.

Therefore, after a thorough consideration of the issues at bar, the applicable law as applied to the facts of this claim, and other relevant matters of record including the representations of credible counsel, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

2. The claimant has failed and/or refused to respond to the respondents' routine and appropriate discovery requests propounded upon him on December 12, 2025.

3. After having received due and legal notice of both the respondents' MTD with or without prejudice filed with the Commission on June 16, 2026, as well as due and legal notice of the date, time, and place of the subject hearing, the claimant failed and/or refused to respond to the MTD in any way and he failed and/or refused to appear at the subject hearing.

4. The claimant has not requested a hearing within the last six (6) months and has taken no steps to either raise or prosecute any issue(s) in this claim.

5. Therefore, the preponderance of the evidence compels the decision the respondents' MTD with or without prejudice filed June 16, 2026, should be and hereby is GRANTED; and this claim is dismissed ??? with or without prejudice ??? to its refiling pursuant to the deadlines prescribed by ***Ark. Code Ann.*** Section 11-9-702(a) and (b) and 11 ***CAR*** Section 25-110(d) (2025 ***Code of AR Regulations***), formerly cited as Commission Rule 099.13.

If they have not already done so, the respondents hereby are ordered to pay the court reporter's invoice immediately upon their receipt thereof.

IT IS SO ORDERED.

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Mike Pickens
Administrative Law Judge

MP/mp