

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H304906**

LUIS ROLDAN (DEC'D), EMPLOYEE	CLAIMANT
BRYAN BOWERS, GCB BUILDERS, EMPLOYER	RESPONDENT
TECHNOLOGY INS. CO., CARRIER	RESPONDENT
AMTRUST NORTH AMERICA, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED MAY 1, 2024

Hearing conducted on Friday, April 12, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant's widow, Mrs. Virginia Martinez-Castillo, is represented by Attorney Phillip Wells, of Jonesboro, Arkansas, who did not appear in person at the hearing.

The Respondents were represented by the Honorable William C. Frye, North Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on April 12, 2024, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records, is deceased, and his widow, Virginia Martinez-Castillo, was acting as a *pro se* Claimant for husband's estate at the initial filing of the motion. The Respondent/Employer was made aware of his death on July 20, 2023, the same day it occurred. Admitted into evidence was Commission Exhibit 1, pleadings, correspondence, and Certified U.S. Mail return receipts, consisting of nine pages. I have also blue-backed to the

evidentiary record Claimant's Forms AR-1, AR-2, and AR-C, plus a letter from Phillip Wells to the Commission dated March 21, 2024, *as discussed infra*.

The record reflects the following procedural history: on August 3, 2023, a Form AR-C was filed in this case, reflecting that Claimant died purportedly of poison inhalation. The form AR-C was filed by the Claimant's then lawyer, Mark Peoples, who entered his appearance the same day as the filing of the Form AR-C. The Respondents were represented by Attorney William C. Frye, who entered an appearance on August 10, 2023. Respondents filed a Form AR-2 on August 14, 2023, controverting the claim in its entirety on the grounds that Claimant was a sub-contractor and not a direct employee of the insured. The Respondents further codified their controverted position via email dated August 22, 2023, sent to the Commission and Claimant's attorney.

Peoples filed a Motion to Withdraw as Counsel from the claim on September 13, 2023. The Commission granted the motion on September 26, 2023. Respondents then filed a Motion to Dismiss on February 9, 2024. Claimant's widow was sent notice of the Motion to Dismiss from the Commission on February 12, 2024, to Claimant's last known address. She did not respond to the Motion; so a hearing was set for April 12, 2024.

Thus, in accordance with applicable Arkansas law, the Claimant's widow was mailed due and proper legal notice of both the Respondents' Motion to Dismiss and the hearing notice at her current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was signed by the Claimant's widow at the address of record and the regular First-Class mail notice was not returned. The Claimant's widow hired Attorney Phillip Wells on March 21, 2024. He responded to the Motion to Dismiss on March 29, 2024, indicating that his client did not object to the dismissal of

this claim without prejudice. Attorney Wells then filed another Form AR-C, signed by the widow and himself.

Since there was not a request for hearing - rather, a concession to the dismissal without prejudice - the Motion to Dismiss hearing date was not continued. The hearing took place on April 12, 2024. The Claimant's widow and her counsel requested permission not to show up for the hearing since they were conceding to the Motion to Dismiss without prejudice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the April 12, 2024, hearing.
3. The Claimant has failed to prosecute this claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.

DISCUSSION

Consistent with both *Ark. Code Ann.* § 11-9-702(a)(4) (Repl. 2012) and AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Commission Exhibit 1 provides multiple signed Certified U.S. Mail Return Receipts. One receipt dated February 14, 2024, signed by Virginia Martinez Castillo, the Claimant's widow, establishes Claimant's notice of the Motion to Dismiss. The other Certified U.S. Mail Return Receipt dated March 14, 2024, was also signed by the Claimant's widow, and establishes notice of the Motion to Dismiss hearing date.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant's widow responded to the Motion to Dismiss, albeit late, through her current attorney who did not request a hearing. Rather, he consented to the Motion to Dismiss without prejudice. Since no action has been taken since the filing of the August 3, 2023, Form AR-C, the Respondents' motion should be granted. Therefore, I find by the preponderance of the evidence that the Claimant's widow has run afoul of AWCC Rule 099.13 and the Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is granted, and this claim is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge