

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H106924**

**TERRY SANDERS,
EMPLOYEE**

CLAIMANT

**AIRGAS USA, LLC
EMPLOYER**

RESPONDENT

**AIU INS. CO./GALLAGHER BASSETT SERVICES, INC.
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER FILED OCTOBER 12, 2023,
DENYING RESPONDENTS' MOTION TO DISMISS WITHOUT PREJUDICE**

Hearing conducted on Tuesday, October 10, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Terry Sanders, pro se, of El Dorado, Ouachita County, Arkansas, appeared in person at the hearing.

The respondents were represented by the Honorable Rick Behring, Jr., Newkirk & Jones Law Firm, PLLC, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, October 10, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Repl.).

The respondents filed a motion to dismiss and brief in support thereof with the Commission on August 4, 2023, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at his addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested. Thereafter, the claimant appeared in person on his own behalf at the subject hearing.

The claimant and the respondents' attorney had a chance to visit immediately prior to the subject hearing. The claimant requested the respondents allow him to see a physician for his left shoulder, and the respondents agreed with this request. The claimant also contends he sustained a compensable injury to his lower back, which claim the respondents deny in its entirety. The claimant testified he returned to work at his regular job duties over a year ago, and he has been working ever since as a forklift driver. He testified he has been able to "adapt" and to perform all his required job duties.

At the subject hearing, the claimant requested a hearing on the merits of his claim and, specifically, whether his alleged lower back problems are compensable. Thereafter, the ALJ strongly encouraged the claimant to retain the services of a workers' compensation attorney. The ALJ also gave the claimant the toll-free telephone number to the Commission's Legal Advisors' Division.

The record herein consists of the hearing transcript and any and all exhibits contained therein and/or 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 the respondents' 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 her claim at this time.

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 the respondents' motion to dismiss, as well as due and legal notice of the subject hearing, the claimant appeared pro se at the hearing.
3. The claimant specifically requested a hearing on the merits of his claim at the hearing.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on August 4, 2023, should be and hereby is DENIED.
5. The ALJ's office will mail the parties the prehearing questionnaire and other related documents, and this claim will be scheduled for a prehearing conference in due course.

AGAIN, THE CLAIMANT IS STRONGLY ENCOURAGED TO RETAIN THE SERVICES OF AN ATTORNEY OF HIS OWN CHOOSING TO REPRESENT HIM IN THIS MATTER.

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp