

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

**TERRY SANDERS,  
EMPLOYEE**

**CLAIMANT**

**AIRGASS USA, LLC,  
EMPLOYER**

**RESPONDENT**

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

**RESPONDENT**

**OPINION TO DISMISS WITHOUT PREJUDICE  
FILED APRIL 16, 2024**

Hearing conducted on Thursday, April 11, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in El Dorado, Union County, Arkansas.

The claimant, Mr. Terry Sanders, 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., Newkirk & Jones Law Firm, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Thursday, April 11, 2024, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement) and Commission Rule 099.13 (2024 Lexis Repl.).

This claim was the subject of a prior hearing based on the respondents' motion to dismiss for lack of prosecution. On August 4, 2023, the respondents filed their first motion to dismiss for lack of prosecution and incorporated brief in support thereof (8/24/2023 MTD) with the Commission. A hearing was conducted on this motion on October 10, 2023. The claimant appeared in person at the MTD hearing, and advised the ALJ on the record he wished to request a hearing on his claim. Therefore, the ALJ denied the respondents' 8/24/2023 MTD, and his office sent out to the parties

the prehearing questionnaire documents in anticipation of setting a prehearing teleconference, and proceeding to a hearing. (October 10, 2023, Hearing Transcript; Opinion Denying the Respondents' MTD filed October 12, 2023. And *see*, Respondents' Exhibit 1 of the April 11, 2024, hearing, at 10-13). Thereafter, even after having formally requesting a hearing on the record and having received the prehearing questionnaire documents, the claimant failed and/or refused to file a prehearing response, or to communicate with the Commission or the respondents in any way. (RX1 at 14).

Consequently, the respondents' renewed their request this claim be dismissed without prejudice via email to the ALJ dated January 5, 2024, based on the 8/24/2023 MTD, as well as the fact the claimant failed and/or refused to respond to the prehearing questionnaire, and/or take any steps whatsoever to prosecute his claim since the ALJ's October 12, 2023, opinion denying the respondents' request for dismissal at that time. (RX1 at 15).

Pursuant to the applicable law and in advance of the second hearing on the respondents' renewed MTD request, the claimant was mailed a copy of the respondents' second MTD request and the subject hearing notice via the United States Postal Service (USPS), Certified Mail, Return Receipt Requested, which he received on February 2, 2024. (Commission's Exhibit 1). Thereafter, the claimant failed and/or refused to object to the respondents' MTD, or to respond in any way to either the Commission or to the respondents; and he failed and/or refused to appear at the subject hearing. (4/11/2024 Hearing Transcript; RX1).

The record herein consists of the hearing transcript of the first MTD hearing held on October 10, 2023, and any and all exhibits contained therein and attached thereto; as well as the hearing transcript and any and all exhibits contained therein and attached thereto of the second MTD hearing conducted on April 11, 2024 (herein incorporated by reference).

### **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 his 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 been mailed and received due and legal notice of both the respondents' current MTD and the subject hearing date, time, and place, the claimant neither inquired concerning nor objected nor responded to the motion in any way, and he did not appear, nor cause anyone to appear on his behalf, at the subject hearing – the second hearing conducted on the respondents' request this claim be dismissed without prejudice. Therefore, the claimant is deemed to have waived his right to a hearing on the respondents' current motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to request a hearing within the last six (6) months, and he has failed and/or refused to take any action(s) whatsoever to prosecute his claim, including but not limited to his failure and/or refusal to respond to the prehearing questionnaire documents the ALJ's office forwarded to both parties after the first October 10, 2023, hearing on the respondents' 8/24/2023 MTD.
4. Therefore, the respondents' current motion to dismiss without prejudice renewed by email dated January 5, 2024, should be hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b), and Commission Rule 099.13.

This 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 this claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

If they have not already done so, the respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp