

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H306164

WHITNEY SCRUGGS, EMPLOYEE

CLAIMANT

EXPRESS SERVICES, INC., EMPLOYER

RESPONDENT

ATU INSURANCE/SEDGWICK CMS, CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 27, 2025

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Arkansas on August 12, 2025.

Claimant is pro-se and appeared at the hearing.

Respondents are represented by their attorney, Carol Worley, of Little Rock, Arkansas, who appeared on their behalf.

STATEMENT OF THE CASE

A hearing was held in the above styled matter on August 12, 2025, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Ann. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act, which has recently been renamed 11 C.A.R. 25-110(d) and will be referred to by that name in the remainder of this opinion. The claimant did appear at the time of the hearing and again testified that he wished to pursue his claim. A previous Motion to Dismiss was filed on August 20, 2024, and a hearing was held on that motion on October 23, 2024. At the time of the previous hearing, the claimant appeared and requested that the Motion to Dismiss be denied. An Opinion was issued on October 23, 2024, and the motion was denied at that time.

The Opinion of October 23, 2024, in regard to the initial Motion to Dismiss, found that a First Report of Injury was filed on or about September 21, 2023, which provided that the claimant was injured on September 11, 2023, when the claimant slipped and fell

and fractured his ribs and sternum. An AR – 2 was filed on September 25, 2023, which provided that the first compensation check, in the amount of \$560.00 was issued on September 19, 2021. A Form AR – C was filed on February 13, 2024, by the claimant's attorney at the time, which provided that the claimant had injured multiple body parts including without limitation, the back, tailbone, ribs, toes, face, and fingers. Claimant's attorney was allowed to withdraw on July 22, 2024. A Motion to Dismiss for Failure to Prosecute was then filed on August 20, 2024, and the respondents contended that the claimant had taken no additional action to prosecute his claim and that consequently, the matter be dismissed for lack of prosecution pursuant to the Commission Rule now named 11 C.A.R. 25-110 (d) and A.C.A. 11-9-702. The claimant admitted that he had not filed a response to the Motion to Dismiss but stated that he intended to pursue his claim.

In regard to the issue of dismissing the claim per the respondents' initial Motion to Dismiss, A.C.A. 11-9-702 (a) (4) provides that if within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may** (emphasis added) upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a) (1) – (3) of this section. Here the claimant appeared at the time of the hearing and unequivocally stated that he intended to pursue his claim in regard to his injuries. He was instructed to contact the Legal Advisor Division of the Workers' Compensation Commission. Based upon the claimant's appearing at the hearing, his statement that he intended to pursue his claim, and the fact that the claimant's attorney was allowed to withdraw, it was found back in October 23, 2024, that there was no basis to dismiss the claim at that time.

A second Motion to Dismiss was filed on January 30, 2025, contending that the claim should be dismissed pursuant to A.C.A. 11-9-702 and also what is now named 11 C.A.R. 25-110(d), a rule of the Workers' Compensation Commission that provides upon an application by either party for a dismissal for failure to prosecute, the Commission may, after reasonable notice to all parties, enter an order dismissing the claim.

It is noted that appropriate notice was provided to the claimant notifying him of the hearing and that he was in fact present. The claimant again stated that he intended to pursue his claim. It is also noted that the claimant had failed to take any action to pursue his claim since the previous Motion to Dismiss, although he did in fact appear at both Motion to Dismiss hearings.

ORDER

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of respondent's attorney and the testimony of the claimant, it is found that the Motion to Dismiss shall be taken under advisement at this time and that the claim shall proceed to a hearing pursuant to the statutory law and the rules of the Arkansas Workers' Compensation Commission in a timely process. The claimant is hereby placed upon notice that failing to respond to discovery, failing to pursue his claim in a timely manner, and failing to keep the Commission notified of his mailing address, may result in the dismissal of his claim without prejudice.

IT IS SO ORDERED.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE