

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H300887**

**TORRENCE L. SHELTON,  
EMPLOYEE**

**CLAIMANT**

**DIAMOND CONSTR. CO., INC.,  
EMPLOYER**

**RESPONDENT**

**ACCIDENT FUND INS. CO. OF AMERICA,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER FILED OCTOBER 12, 2023,  
GRANTING 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. Torrence L. Shelton, pro se, of North Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Carol Lockard Worley, Worley, Wood & Parrish, P.A., 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 (second) motion to dismiss with the Commission on August 15, 2023, requesting this claim be dismissed without prejudice for lack of prosecution. (The respondents previously had filed a motion to dismiss with the Commission on August, 10, 2023.) 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. The Rainwater, Holt & Sexton law firm initially had represented the claimant in this

matter; however, the claimant apparently became unhappy with their representation, which he expressed in a handwritten letter to the ALJ dated August 28, 2023. This letter stated the claimant was, "...requesting a hearing for reason I am not being properly represented in my case on the matter." (*See*, Commission's file, herein incorporated by reference into the record; *see, infra.*). But significantly, the claimant did not request a hearing on the merits of his claim, nor did he nor has he ever stated what specific benefits he is seeking.

Also significantly, the claimant failed and/or refused to appear at the subject hearing to explain his letter, and/or to request a hearing. While apparently the claimant did appear at the Commission on the day of the hearing, he decided to leave the Commission premises before the hearing was held. In addition, the respondents' highly credible and well-respected counsel advised on the record the claimant refused her attempt to lead him to the Commission's Legal Advisor Division where he could have visited with a legal advisor. Instead, the claimant simply left the building and, ultimately, failed and/or refused to appear at the subject hearing.

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 his claim and, apparently, has chosen to abandon 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 received due and legal notice of the respondents' motion to dismiss, as well as due and legal notice of the subject hearing, the claimant failed and/or refused to appear at the hearing. Therefore, the claimant has waived his right to a hearing on the respondents' motion to dismiss.
3. The claimant has failed to prosecute his claim and, moreover, to date has failed to request a hearing on the merits of his claim. The Commission does not have jurisdiction over the claimant's current complaint that his counsel allegedly did not "properly represent" him in this matter.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on August 15, 2023, should be and hereby is GRANTED pursuant to both *Ark. Code Ann.* Section 11-9-702(a)(4) and Commission Rule 099.13.

Nothing in this opinion and order shall be construed to prevent the claimant, any attorney he may hire to represent him, or any person acting on his behalf from refileing this claim, *if* the claim is refiled within the deadlines set forth in *Ark. Code Ann.* Section 11-9-402.

The respondents shall 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