

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H306984**

**JAMES R. SMART,
EMPLOYEE**

CLAIMANT

**SIGNODE INDUSTRIAL GROUP US, INC.,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF N. AMERICA/
ESIS, INC.,
CARRIER/TPA**

RESPONDENT

**OPINION TO DISMISS WITHOUT PREJUDICE
FILED DECEMBER 18, 2024**

Hearing conducted on Wednesday, December 18, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. James R. Smart, of Benton, Saline County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Eric Newkirk, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, December 18, 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 Replacement).

On October 10, 2024, the respondents filed a motion to dismiss without prejudice and brief in support (MTD) requesting this claim be dismissed for lack of prosecution pursuant to the aforementioned statute and Commission rule. In compliance with the applicable law the claimant was provided due and legal notice of the respondents' MTD, as well as the date, time, and location

of the subject hearing. Thereafter, the claimant did not respond in writing to the respondents' motion in any way, and he failed and/or refused to appear at the subject hearing.

The respondents' MTD and brief in support thereof contains a thorough and accurate recitation of all relevant facts. I hereby incorporate the respondents' MTD and brief in support thereof as if set forth word-for-word herein. (RX1 at 1-7).

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto. (Hearing Transcript; RX1 at 11).

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Repl.), 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 either request a hearing within the last six (6) months, and he has taken no steps whatsoever to prosecute this claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, the representations of credible counsel, 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 due and legal notice of the respondents' MTD without prejudice and brief in support thereof filed with the Commission on October 10, 2024, as well as notice of the date, time, and place of the subject hearing, the claimant failed and/or refused

to respond in any way to the respondents' letter MTD and failed and/or refused to appear at the hearing. Therefore, the claimant is deemed to have waived his right to a hearing on the respondents' MTD.

3. The claimant has not requested a hearing within the last six (6) months, and he has failed and/or refused to prosecute this claim.
4. Therefore, the respondents' MTD without prejudice filed October 10, 2024, should be and 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 the 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.

Mike Pickens
Administrative Law Judge

MP/mp

