

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H303454**

**KENNITH L. SMITH,
EMPLOYEE**

CLAIMANT

**CITY OF LEWISVILLE,
EMPLOYER**

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE
WORKERS' COMPENSATION TRUST/
ARK. MUNICIPAL LEAGUE
CARRIER/TPA**

RESPONDENT

**ORDER TO DISMISS WITHOUT PREJUDICE
FILED JULY 26, 2024**

Hearing conducted on Thursday, July 25, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Texarkana, Miller County, Arkansas.

The claimant, Mr. Kenneth L. Smith, pro se, of Lewisville, Lafayette County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Mary K. Edwards, Attorney, Arkansas Municipal League, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Thursday, July 25, 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 April 22, 2024, the respondents filed with the Commission a motion to dismiss this claim without prejudice (MTD) pursuant to the aforementioned statute and Commission rule. Thereafter, pursuant to the applicable law the claimant was provided due and legal notice of both the respondents' MTD, as well as notice of the subject hearing to his last known of address on record with the Commission via the United States Postal Service (USPS), Certified Mail, Return Receipt

Requested, which the claimant received on May 14, 2024. (Commission Exhibit 1). Thereafter, the claimant responded to the subject MTD via a handwritten letter filed with the Commission on May 6, 2024, wherein in essence he stated he was still undergoing pain management treatment, and he needed, “just a little financial help to get me by and through.” (Commission Exhibit 2). The claimant’s letter did not identify any issues that were ripe for a hearing, nor did he request a hearing on any issue(s). (*Id.*). The claimant failed and/or refused to appear at the hearing so he did not explain or elaborate in any way concerning the statements he made in his letter. (Commission’s Exhibits 1 & 2; Respondents’ Exhibit 1).

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement), 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’ MTD. 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 to date failed and/or refused to prosecute his claim at this time.

Therefore, after a thorough consideration of the applicable law as applied to the facts of this claim, the issues, and other relevant matters of record, as well as the representations of credible counsel 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 without prejudice filed with the Commission on April 22, 2024, as well as notice of the subject hearing date, time, and place, the claimant failed and/or refused to appear at the subject hearing. Therefore, he is deemed to have waived his right to a hearing on the respondents' motion herein.
3. The preponderance of the evidence compels the decision that the respondents' subject motion to dismiss without prejudice filed April 22, 2024, should be and hereby is GRANTED; and this claim hereby 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.

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