

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G901398**

**RANDY F. SMITH, EMPLOYEE**

**CLAIMANT**

**EVERGREEN PACKAGING, LLC, EMPLOYER**

**RESPONDENT**

**ACE AMERICAN INSURANCE COMPANY/  
GALLAGHER BASSETT SERVICES, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JANUARY 6, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Jefferson County, Pine Bluff, Arkansas.

Claimant, Mr. Randy F. Smith, *pro se*, appeared at the hearing.

Respondents were represented by Mr. William C. Frye, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on November 20, 2020, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the November 20, 2020, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

**DISCUSSION**

On February 24, 2019, Claimant sustained an admittedly compensable injury to his right foot while working for the respondent-employer. The respondent-insurance-carrier filed a Form AR-2 with the Commission on March 6, 2019. The carrier accepted compensability of the claim for a foot injury as a result of the February 24, 2019, incident, and at the time of the filing of the Form AR-2, all benefits due were paid, or in the process of being paid, in accordance with the Arkansas Workers' Compensation Statute.

On February 18, 2020, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of February 24, 2019, and asserted his entitlement to initial and additional workers' compensation benefits. In the Form AR-C, Claimant's cause of injury was described as: "Claimant was performing maintenance on a machine when he injured his foot and other whole body."

It is noted from the file that Claimant was previously represented by counsel, Ms. Laura Beth York. By letter to the Commission dated April 28, 2020, Ms. York requested to withdraw as Claimant's counsel. The Full Commission granted Ms. York's motion to withdraw by order dated July 2, 2020.

Since the filing of the Form AR-C on February 18, 2020, there was no action taken by Claimant to prosecute his claim.

Therefore, on August 4, 2020, Respondents filed with the Commission a letter motion to dismiss. On August 6, 2020, the Commission sent a Notice to Claimant advising him of Respondents' letter motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

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Pursuant to a Hearing Notice dated October 21, 2020, the Commission advised the parties that the matter had been set for a hearing on the Respondents' letter motion for dismissal. Said hearing was scheduled for November 20, 2020, at 1:00 p.m., at the Jefferson County Courthouse, Pine Bluff, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was delivered on October 23, 2020, at 11:52 a.m., and a signature was obtained. There was no other response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' letter motion for dismissal. At the time of the hearing, Claimant appeared without legal counsel. Claimant testified that that he had no objection to the Respondents' letter motion for dismissal. Claimant explained that, while he was still taking medication and using an orthotic device, he was not seeking other medical treatment at the time. Claimant also stated that he felt that he had fully healed from his foot injury and that he understood that he could contact the Commission's Legal Advisor Division if he had questions regarding the continued use of medication and the orthotic device as a result of his injury.

Respondents appeared through their attorney and requested that the claim be dismissed, as Claimant had not made a bona fide request for a hearing for additional benefits in the last six (6) months. Counsel advised that based on Claimant's foot injury and the loss of his big toe, Respondents had paid all permanent disability benefits owed to Claimant and would continue to pay for his medication for his foot. Counsel noted that Claimant continued to work for Respondent-Employer and that he had been promoted.

A review of the evidence shows that Claimant has had sufficient time to pursue additional workers' compensation benefits. It has been more than more than ten (10) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a bona fide hearing for additional benefits. Hence, Claimant has failed and/or refused to prosecute his claim for additional workers' compensation benefits at this time.

Therefore, after consideration of the evidence presented, I find Respondents' letter motion for dismissal to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702, this claim for benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 24, 2019, Claimant sustained an admittedly compensable injury to his right foot while working for the respondent-employer.
3. Subsequently, on March 6, 2019, respondent-insurance-carrier filed a Form AR-2 with the Commission. The carrier accepted compensability of the claim for a right foot injury as a result of the February 24, 2019, incident, and at the time of the filing of the Form AR-2, all benefits due were paid, or in the process of being paid, in accordance with the Arkansas Workers' Compensation Statute.
4. On February 18, 2020, Claimant's attorney of record at the time filed a Form AR-C with the Commission.
5. Claimant has had ample opportunity to pursue additional workers' compensation benefits. It has been more than more than ten (10) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has

not requested a bona fide hearing for additional benefits. Hence, Claimant has failed and/or refused to prosecute his claim for additional workers' compensation benefits at this time.

6. On August 4, 2020, Respondents filed with the Commission a letter motion to dismissal.
7. Claimant appeared at the hearing and testified that that he had no objection to the Respondents' letter motion for dismissal. Claimant explained that while he was still taking medication and using an orthotic device, he was not seeking other medical treatment at the time. Claimant also stated that he felt that he had fully healed from his foot injury and that he understood that he could contact the Commission's Legal Advisor Division if he had questions regarding his continued use of medication and the orthotic device as a result of his injury.
8. Respondents' letter motion for dismissal is well founded.
9. Respondents' letter motion for dismissal should be granted pursuant to Ark. Code Ann. § 11-9-702, without prejudice, to the refiling of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702, without prejudice, to the refiling of this claim within the applicable time period.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**