

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H306653

CLINTON STEELE, EMPLOYEE

CLAIMANT

**GEMINI MOTOR TRANSPORT dba LOVES
TRAVEL STOP & COUNTRY STORE, EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
BROADSPIRE SERVICES, INC., CARRIER/TPA**

RESPONDENT

OPINION FILED 7 February 2025

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 8 January 2025 in Little Rock, Arkansas.

The *pro se* claimant did not appear.

The Barber Law Firm, Ms. Karen McKinney, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 8 January 2025. This case relates to an alleged workplace injury sustained on or about 23 April 2023.

A Form AR-C was filed by the claimant, through counsel, on 9 October 2023, claiming gradual onset of lower back pain. The respondents denied the claim and retained Ms. Karen McKinney, who entered her appearance via an email dated 13 November 2023.

The respondents first moved for a dismissal for lack of prosecution on 16 April 2024. The claimant objected to the dismissal on 7 May 2024. He also filed his prehearing information on that date. The respondents then filed their prehearing information on 3 June 2024. After a prehearing conference, a Prehearing Order was filed on 19 June 2024, setting the matter for a hearing on 18 September 2024.

Then, on 15 August 2024, the claimant's counsel advised, by way of a letter dated 14 August 2024, that he no longer represented the claimant in this matter. The hearing was removed from the docket, and a letter dated 5 September 2024 was sent to the claimant asking whether he objected to his attorney's withdrawal from the matter. The claimant did not respond to that letter to object to the withdrawal of his counsel. An Order granted the withdrawal was entered on 1 October 2024.

On 2 October 2024, the respondents filed a second Motion to Dismiss the claim. Therein, they argued that more than six months had passed since the filing of the AR-C on the claim. They also argued that the claimant's refusal to participate in the discovery process, since those requests were propounded first in November of 2023 and then again in June of 2024, evidenced his lack of prosecuting his claim.

Notice of the respondents' second motion was sent to the claimant, consistent with AWCC practices, via First Class Mail and Certified Mail, on 7 November 2024. Notice of the hearing on that motion was sent in the same fashion on 2 December 2024. When mailings are returned to the AWCC as not accepted or undeliverable, those mailings are appended to the claim's file. This file contains no such returned mailings.

The respondents appeared on 8 January 2025, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the file reflects no bona fide request for a hearing on an issue ripe for litigation in this claim in the relevant time preceding the filing of their motion. The claimant did not appear to resist the dismissal of his claim, which bolsters the respondents' argument that he has either abandoned the claim or refused to prosecute it. The respondents offered a number of documents into the record which, collectively, were admitted as Respondents' Exhibit No 1. The exhibit included ninety-two (92) pages of relevant filings, deposition testimony, and correspondence.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 99.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents' counsel, I find that the respondents' Motion to Dismiss should be granted and that the matter should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE