

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002576

JAYSON C. STELL, EMPLOYEE

CLAIMANT

CUSTOM TOOL AND DIE, INC., EMPLOYER

RESPONDENT

**PHOENIX INSURANCE COMPANY/
TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED NOVEMBER 17, 2021

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas, on October 12, 2021.

Claimant is *pro se*.

Respondents are represented by Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on October 12, 2021, in Little Rock, Arkansas, on the respondents' Motion to Dismiss for failure to prosecute pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The respondents contend that a Form AR-C was filed on May 11, 2020, and that a Motion to Dismiss was filed on December 9, 2020, for failure to prosecute. At that time, the claimant objected to the dismissal of the claim, and the Motion to Dismiss was denied. Discovery was served upon the claimant and when he failed to file a response, a Motion to Compel was filed and an Order was entered compelling the claimant to respond to the discovery. At the time of the hearing, the claimant had still not responded to the discovery.

The claimant was employed by Custom Tool and Die, Inc. The claimant appeared in person at the time of the hearing. The claimant stated that this matter had been a real

burden. He has a CDL Class A license and stated he was involved in a bad wreck while driving back from Oklahoma. The other party came across the interstate and hit him. The other party's insurance accepted full responsibility but did not pay the claims. Four (4) months later, the claimant stated he contacted his employer about filing a workers' compensation claim. He stated that he was told that he did not report the accident. The claimant was questioned by the Commission about obtaining an attorney and stated that he had not obtained an attorney because he thought it would resolve itself, but it had not. The claimant admitted that it was his fault that he had not responded to the discovery from the respondents.

A hearing was set for October 12, 2021, in regard to the Motion to Dismiss. The claimant was present at the hearing. At the time of the hearing, Amy C. Markham appeared on behalf of the respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having had an opportunity to hear the statements of the attorney and the claimant, the parties were instructed that this matter would be taken under advisement for thirty (30) days, and the claimant was required to take action within the thirty (30) days or the claim would be dismissed. The claimant has failed to take any action as instructed and has still not responded to discovery or the prehearing questionnaire. Consequently, there is no alternative but to find that the Motion to Dismiss should be granted at this time, and the matter should be dismissed without prejudice.

ORDER

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed without prejudice at this time.

IT IS SO ORDERED.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE