

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H003057

TROY SUNKINS, EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE, INC., EMPLOYER

RESPONDENT

**LM INSURANCE CORPORATION,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED APRIL 5, 2022

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas, on March 29, 2022.

Claimant is represented by Mr. Philip M. Wilson, Attorney-at-Law, Little Rock, Arkansas.

Respondents are represented by Mr. Michael C. Stiles, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on March 29, 2022, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Ark. Code Ann. §11-9-702(d), and Rule 099.13 of the Arkansas Workers' Compensation Act. The claim involved an injury which occurred on or about May 12, 2020, when an employer/employee relationship existed. The claimant, on the above-date, sustained a hernia, during the course and scope of his employment after lifting a package, and the injury was accepted as compensable. A Form AR-2 was filed on May 26, 2020, confirming the acceptance of the abdominal injury or hernia, and the Form-2 further provided that total disability benefits had been initiated. Surgery for the hernia occurred on or about June 25, 2020, and the claimant was paid the maximum of twenty-six (26) weeks of temporary total disability benefits through the date of February 16, 2021. On April 15, 2021, attorney Phillip Wilson filed a Form AR-C on behalf of the claimant for both initial and additional benefits. The claimant's counsel was served with

interrogatories and medical authorizations on April 22, 2021, and a limited response was filed to the discovery on April 22, 2021. The claimant failed to appear for an Independent Medical Evaluation on April 27, 2021, and the appointment was rescheduled for May 13, 2021, when the claimant again failed to appear for the Independent Medical Evaluation. By this time, the claimant had returned to work for the respondent. No action has been taken in over six (6) months with respect to the claim. A Motion to Dismiss for failure to prosecute was filed on February 1, 2022, and the claimant failed to respond to the motion.

A hearing was set for March 29, 2022, in regard to the Motion to Dismiss. The claimant and his representative failed to appear at the hearing after notice was mailed on or about March 7, 2022. At the time of the hearing, Michael C. Stiles appeared on behalf of the respondents and provided that he had been told by his co-counsel that the attorney for the claimant had notified the respondent's attorney and stated that there was no objection to the matter being dismissed without prejudice and that neither he nor the claimant planned to appear.

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 respondent's attorney, 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