

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H406828**

**DONALD L. TAFT,
EMPLOYEE**

CLAIMANT

**10 ROADS EXPRESS, LLC,
EMPLOYER**

RESPONDENT

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

RESPONDENT

**OPINION TO DISMISS WITHOUT PREJUDICE
FILED DECEMBER 5, 2024**

Hearing conducted on Wednesday, December 4, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant's attorney, the Honorable Mark Alan Peoples, the Peoples Law Firm, Little Rock, Pulaski County, Arkansas, waived appearance at the hearing.

The respondents were represented by the Honorable Rick Behring, Jr., Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, December 4, 2024, to determine whether this claim should be dismissed for lack of prosecution pursuant to Commission Rule 099.13 (2024 Lexis Replacement).

The claimant herein is represented by counsel, the Honorable Mark Alan Peoples. On November 18, 2022, the respondents filed a motion and incorporated brief in support thereof requesting this claim be dismissed without prejudice for lack of prosecution (MTD). In compliance with the applicable law both the claimant and his attorney of record, Mr. Peoples, were provided due and legal notice of the respondents' MTD as well as the date, time, and location of the subject

hearing. Immediately thereafter, by email dated November 19, 2024, the claimant's attorney responded to the MTD as follows: "Claimant does not oppose dismissal, provided it is w/o prejudice. We will ask to be excused from any hearing on this Motion." (Commission Exhibit 1). The ALJ granted Mr. Peoples's request to be excused from attending the subject hearing. (Comms'n Ex. 2). Consequently, the claimant's attorney is deemed to have waived appearance at the hearing on the claimant's behalf.

Although the claimant works for the respondent-employer, 10 Roads Express, LLC, which has an operation in North Little Rock, Arkansas, he is a resident of Florida and was injured in Georgia. Consequently, the claimant had a choice of law concerning the jurisdiction in which he chose to file his workers' compensation claim. It appears he chose to file his claim in Florida and to apply for and to receive benefits pursuant to Florida law. The respondents accepted his injury as compensable and paid medical and indemnity benefits based on Florida law; however, for some reason a Form AR-C was filed on the claimant's behalf in Arkansas. (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 Repl.), 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' motion to dismiss. 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 chosen not to actively prosecute his claim at this time.

Therefore, after a thorough consideration of the facts, issues, the applicable law, the representations of credible counsel, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having been mailed due and legal notice of the respondents' MTD without prejudice and incorporated brief in support thereof filed with the Commission on November 18, 2024, as well as notice of the date, time, and place of the subject hearing, the claimant through his attorney advised he had no objection to the dismissal provided the dismissal was in fact without prejudice, and he requested to be excused from attending the subject hearing, which request the ALJ granted.
3. The claimant is a Florida resident, and his work-related injury occurred in Georgia. The claimant chose to apply for and to receive workers' compensation benefits pursuant to Florida law. The respondents accepted the claimant's injury as compensable and have paid medical and indemnity benefits in accordance with Florida law. To date the claimant has chosen not to prosecute a workers compensation claim in Arkansas.
4. Therefore, the respondents' MTD without prejudice filed November 18, 2024, should be and hereby is GRANTED; and this claim 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.

This Order shall *not* be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

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

Donald L. Taft, AWCC No. H406828

MP/mp

MP/mp