

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H400710**

**WALTER L. TERRY, EMPLOYEE**

**CLAIMANT**

**AUTO CREDIT XPRESS, LLC, EMPLOYER**

**RESPONDENT**

**NORGUARD INSURANCE CO., CARRIER/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 25, 2024**

**Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Arkansas on October 15, 2024.**

**Claimant is pro-se and appeared at the hearing.**

**Respondents are represented by their attorney, Karen H. McKinney, of Little Rock, Arkansas, who appeared on their behalf.**

**STATEMENT OF THE CASE**

A hearing was held in the above styled matter on October 15, 2024, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Ann. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant did appear at the time of the hearing and stated that he wished to pursue his claim. A First Report of Injury was filed on February 7, 2024, providing that the claimant was injured on September 9, 2022, and that his employer was notified on February 6, 2024, with the claimant contending that he injured his neck and back due to an automobile accident. An AR-2 was filed on February 7, 2024, and it provided that per their investigation of the claim, the entire claim was being denied for no compensable injury arising from within the course and scope of employment. A Form AR-C was filed on February 5, 2024, by claimant's attorney at the time, which provided that the claimant had injured his back and neck. Claimant's attorney was allowed to withdraw on August 7,

2024, by an Order of the Full Commission. A Motion to Dismiss for Failure to Prosecute was then filed on August 22, 2024. The Motion to Dismiss contends that the claimant's attorney had attempted to propound discovery to the Respondents on February 1, 2024, but had named the wrong Respondent Employer and Carrier, but later, on March 21, 2024, did in fact propound discovery, which the Respondent's formally responded to on April 2, 2024. On May 18, 2024, the Claimant's attorney advised the Commission that he had lost contact with his client and that he would be filing a Motion to Withdraw.

The respondents contend that the claimant has taken no action to prosecute his claim and that consequently, a Motion to Dismiss was filed on August 22, 2024, requesting that the matter be dismissed for lack of prosecution pursuant to Commission Rule 099.13 and A.C.A. 11-9-702. The claimant admitted that he had not filed a response to the Motion to Dismiss but stated that he intended to pursue his claim.

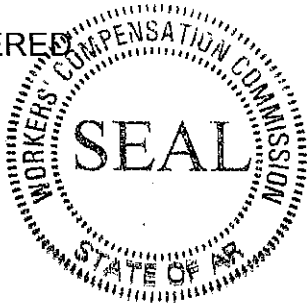
In regard to the issue of dismissing the claim per the respondents' Motion to Dismiss, A.C.A. 11-9-702 (a) (4) provides that if within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may** (emphasis added) upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitations periods specified in subdivisions (a) (1) – (3) of this section. Here the claimant appeared at the time of the hearing and unequivocally stated that he intended to pursue his claim in regard to his injuries. Based upon the claimant's appearance, his statement that he intended to pursue his claim, and the fact that the claimant's attorney was allowed to withdraw only a few weeks prior to an Order allowing his attorney to withdraw, it is found that there is no basis to dismiss the claim at this current time.

It is noted that appropriate notice was provided to the claimant notifying him of the hearing and that he was in fact present.

**ORDER**

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of Respondent's attorney and the statements of the Claimant, there is no alternative but to find that that this matter should not be dismissed at this time.

IT IS SO ORDERED



*James D. Kennedy*  
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JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE