

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H000701**

<b>GARY W. THOMPSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MOHAWK INDUSTRIES, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>LIBERTY MUTUAL GROUP, CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED MARCH 23, 2021**

**Hearing before Administrative Law Judge James D. Kennedy on March 17, 2021, in Mountain Home, Baxter County, Arkansas.**

**Claimant is represented by his attorney, Rick S. Spencer.**

**Respondents are represented by their attorney, Jason Ryburn.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on March 17, 2021, in Mountain Home, 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 claimant was represented by Rick S. Spencer, who appeared, but the claimant failed to appear at the time of the hearing. Jason Ryburn appeared on behalf of the respondents. The claim involved a repetitive motion injury, which was denied in its entirety. The Form AR-C filed by the claimant contended that the Arkansas injury occurred on January 8, 2021. The claimant had filed a similar claim for a repetitive injury in the state of Wyoming, and this injury was accepted by the Wyoming Employer, after the filing of the Arkansas claim. At one point, the claimant agreed to answer interrogatories for a dismissal in regard to the Motion to Dismiss that was filed on or about August 12, 2020, but the claimant had failed to respond. It has been over six (6) months since the claimant has taken any action in this manner, and the claimant has not sought any type of hearing

before the Arkansas Workers' Compensation Commission and has not responded to the propounded discovery. This lack of action led to the filing of a Motion to Dismiss by the respondents.

An appropriate notice setting this matter for a hearing for a Motion to Dismiss was provided to the claimant by both certified and regular mail. A hearing was set for March 17, 2021, in regard to the Motion to Dismiss. The claimant failed to appear at the time of the hearing in Mountain Home, Arkansas, but his attorney was present. At the time of the hearing, Melissa Wood 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 an opportunity to hear the statements of the attorney for the respondent, there is no alternative but to find that this matter should be dismissed for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

**ORDER**

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

**IT IS SO ORDERED.**

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**JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE**