

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H007685**

<b>WILLIS THROWER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>WILBERT BURIAL VAULT CO., INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>OHIO SECURITY INS. CO./CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 18, 2022**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Willis Thrower, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Jason Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on February 16, 2022, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the February 16, 2022, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference.

**DISCUSSION**

Claimant alleged that he sustained an injury to his back on September 2, 2020, while working for the Respondent-Employer. On October 12, 2020, Claimant's counsel filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of September 2,

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2020, and asserted his entitlement to initial and additional workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "Client reached down to pick up corner of a vault to slide back on to the edge of his dolly and felt a sharp pain in his back, sustained injuries to his back and other whole body."

On November 29, 2021, Claimant's previous attorney filed a Motion to Withdraw as Counsel. The Full Commission entered an Order granting the Motion on December 9, 2021.

On December 7, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable.

On May 13, 2021, pursuant to Claimant's change of physician request, he was approved to change physicians from Dr. Scott Carle to Dr. Amir Qureshi.

As Claimant had not taken any action to prosecute his claim after the filing of the Form AR-C, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute on December 13, 2021. On December 17, 2021, the Commission sent a Notice to Claimant advising him of Respondents' Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated January 13, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for February 16, 2022, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A", Third Floor, 324 S. Spring Street, Little Rock, Arkansas. The Hearing Notice was sent to Claimant via Certified Mail – Return Receipt Requested and First-Class Mail. There was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that Claimant had not taken any action in the matter and had not sought any type of *bona fide* hearing before the Workers' Compensation Commission since he filed the Form AR-C. As such, Counsel requested that the claim be dismissed, with prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue his claim for workers' compensation benefits. It has been approximately one (1) year and four (4) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute his claim. Hence, Claimant has failed to timely prosecute his claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 12, 2020, Claimant's counsel filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits in this matter.

3. On November 29, 2021, Claimant’s attorney filed a Motion to Withdraw as Counsel, which was granted by the Full Commission on December 9, 2021.
4. On December 7, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable.
5. On December 13, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. Approximately One (1) year and four (4) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve his claim for workers’ compensation benefits.
7. Claimant has had ample opportunity to pursue this claim for workers’ compensation benefits, but no action has been taken by Claimant in furtherance of his claim, as he has failed to timely prosecute this matter.
8. Respondents’ Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents’ Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

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**IT IS SO ORDERED.**

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**KATIE ANDERSON  
ADMINISTRATIVE LAW JUDGE**