

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE N^o H301055

BRODERICK TOLLIVER, EMPLOYEE

CLAIMANT

LENNOX INDUSTRIES, INC., EMPLOYER

RESPONDENT

**INDEMNITY INS. CO. OF N. AMERICA (P.A.)/
CORVEL HEALTHCARE CORP., CARRIER/TPA**

RESPONDENT

OPINION FILED 19 JULY 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 18 July 2024 in Helena-West Helena, Arkansas.

The *pro se* claimant did not appear.

Newkirk & Jones, Mr. Eric Newkirk, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Helena-West Helena, Arkansas, on 18 July 2024. This case relates to an alleged workplace injury, sustained on or about 26 January 2023. A Form AR-C was filed on the claimant's behalf on 16 February 2023, and a Form AR-2 was filed by the respondents on 7 March 2023 accepting a claim for back and chest injuries.

On 6 May 2024, the respondents requested a dismissal of this matter for failure to prosecute the claim. See Exhibit N^o 1. Letters providing notice of that motion and notice of the hearing were sent to the claimant, consistent with the Commission's practice. I noted at the hearing that mailings from the Commission to claimants are sent via both First Class and Certified Mail with return receipts requested. Returned mail is regularly appended to the Commission's file. The Commission's file does not include any responsive correspondence from the claimant, nor does it include any returned mailings.

The respondents appeared on 18 July 2024, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the file reflects no request for a hearing on a claim in the relevant time preceding the filing of their motion. And the claimant did not appear at the hearing to resist the dismissal of this claim.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 99.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents' counsel, I find that the respondents' Motion to Dismiss should be granted and that the matter should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE