

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G902521**

<b>CARL E. TYSINGER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>RICELAND FOODS, INC., EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>SAFETY NATIONAL CASUALTY CORP., INSURANCE CARRIER</b>	<b>RESPONDENT #1</b>
<b>ESIS, INC., THIRD-PARTY ADMINISTRATOR</b>	<b>RESPONDENT #1</b>
<b>DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED JANUARY 7, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Jefferson County, Pine Bluff, Arkansas.

Claimant, Mr. Carl E. Tysinger, *pro se*, appeared at the hearing.

Respondents #1 were represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

Respondent #2 was represented by Mr. David Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was held on December 18, 2020, 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 December 18, 2020, 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 herein by reference.

**DISCUSSION**

On September 1, 2018, Claimant sustained an admittedly compensable injury to his left arm (elbow) while working for the respondent-employer. The respondent-insurance-carrier filed a Form AR-2 with the Commission on April 19, 2019. The carrier accepted compensability of the claim for a left arm (elbow) injury as a result of the September 1, 2018, incident, and at the time of the filing of the Form AR-2, all benefits due were paid, or in the process of being paid, in accordance with the Arkansas Workers' Compensation Statute.

On April 29, 2019, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of September 1, 2018, and asserted his entitlement initial and additional workers' compensation benefits. In the Form AR-C, Claimant's cause of injury was described as: "Claimant was in the course and scope of employment when he was injured. Claimant sustained injuries to his left arm and other whole body."

It is noted from the file that Claimant was previously represented by counsel, Ms. Laura Beth York. However, on August 5, 2020, the Full Commission issued an order granting Ms. York's request to withdraw as Claimant's counsel.

Since the filing of the Form AR-C on April 29, 2019, Claimant has made no bona fide request for a hearing with respect to his claim.

Therefore, on October 9, 2020, Respondents filed with the Commission a Motion to Dismiss for failure to prosecute, along with a Brief in Support of Motion to Dismiss and a Certificate of Service to Claimant. On October 13, 2020, 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 November 5, 2020, the Commission advised the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss for failure to prosecute. Said hearing was scheduled for December 18, 2020, at 1:00 p.m., at the Jefferson County Courthouse in Pine Bluff, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was delivered on November 9, 2020, at 10:32 a.m., and a signature was obtained. There was no other response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss. At the time of the hearing, Claimant appeared without legal counsel. Claimant testified that it was his understanding that the claim had previously been closed; however, he attended the hearing pursuant to the Hearing Notice he received. Claimant testified that all medical expenses and other benefits had been paid by Respondents and that he did not seek any additional workers' compensation benefits at that time. Claimant stated that he continued to work at Riceland Foods, Inc., and while he still experienced some soreness and swelling, he was able to work at full duty, lifting bags weighing up to 100 pounds. Claimant testified that he had spoken with Respondents' attorney prior to the hearing; that he understood the nature of the hearing; and that he had no objection to the Respondents' Motion to Dismiss.

Respondents appeared through their attorney. Respondents' Counsel advised that Claimant's injury to his elbow was accepted as compensable; that Claimant was released from medical care without a rating in October of 2019; and that all appropriate benefits related to the claim had been paid. Counsel further advised that Claimant was currently working for Respondent-Employer at full-duty capacity. Counsel advised that there was no further action to

be taken in the matter; therefore, Counsel asked that the Motion to Dismiss be granted for failure to prosecute.

A review of the evidence shows that Claimant has had sufficient time to pursue additional workers' compensation benefits. It has been more than one (1) year 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 and/or refused to timely prosecute his claim for additional workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for 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 September 1, 2018, Claimant sustained an admittedly compensable injury to his left arm (elbow) while working for the respondent-employer.
3. Subsequently, on April 19, 2019, respondent-insurance-carrier filed a Form AR-2 with the Commission. The carrier accepted compensability of the claim for a left arm (elbow) injury as a result of the September 1, 2018, incident, and at the time of the filing of the Form AR-2, all benefits due were paid, or in the process of being paid, in accordance with the Arkansas Workers' Compensation Statute.
4. On April 29, 2019, Claimant filed a Form AR-C with the Commission seeking benefits in this matter.

5. Claimant has had ample opportunity to pursue workers' compensation benefits, but no bona fide request for a hearing has been made with respect to the claim, as he has failed to timely prosecute this matter.
6. On October 9, 2020, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Brief in Support of Motion to Dismiss.
7. Claimant appeared at the hearing and testified that he had no objection to the dismissal of his workers' compensation claim. He stated that all medical expenses and other benefits had been paid by Respondents; that he did not seek any additional workers' compensation benefits at that time; and that he continued to work at full duty at Riceland Foods, Inc.
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.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**