

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G802710

TIMOTHY W. VANDAMENT, EMPLOYEE

CLAIMANT

**CHARLES SANDERS, LLC,
(ACE HARDWARE), EMPLOYER**

RESPONDENT

**SENTRY INSURANCE A MUTUAL COMPANY,
CARRIER/TPA**

RESPONDENT

OPINION FILED APRIL 5, 2022

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas, on March 29, 2022.

Claimant is *pro se* and did not appear.

Respondents are represented by Ms. Melissa Wood, Attorney-at-Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled matter on March 29, 2022, 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 was originally represented by Mr. Terence C. Jensen, attorney-at-law, who represented the claimant in a Full Hearing on November 4, 2018, and was allowed to withdraw as the claimant's attorney, by an Order dated January 18, 2021. The claim involved an injury which occurred on or about April 12, 2018, when an employer/employee relationship existed. Respondents accepted a compensable right index finger injury and have paid appropriate benefits, including an impairment rating of forty-five percent (45%) to the finger. The claimant requested a change of physician with

the Commission on June 17, 2019, but the claimant failed to provide the Commission with the physician he would like to use after Dr. David Rhodes indicated that he would not accept him as a patient. The respondents agreed on December 14, 2019, that the claimant could return to his treating physician, Dr. Tait, and an appointment was scheduled on January 8, 2020, but the claimant did not appear at his appointment. Multiple Motions to Dismiss have been filed in this matter, with the last Motion filed on February 8, 2022.

Rule 099.13 of the Arkansas Worker's Commission provides that upon application of either party for a dismissal for a failure to prosecute, the Commission may, after reasonable notice to all parties, enter an Order dismissing the claim. Additionally, Ark. Code Ann. §11-9-702 provides dismissal of a claim if no *bona fide* request for a hearing has been made within six (6) months of the filing of a claim. More than six (6) months have passed since the claimant filed an AR-C, and the claimant has not sought any type of *bona fide* hearing.

A hearing was set for March 29, 2022, in regard to the Motion to Dismiss. The claimant failed to appear after notice to his last known address. At the time of the hearing, Melissa Wood, attorney-at-law, 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 had an opportunity to hear the statements of the respondent's attorney, there is no alternative but to find that the Motion to Dismiss should be granted at this time, and the matter should be dismissed without prejudice.

ORDER

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed without prejudice at this time.

IT IS SO ORDERED:

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE