

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G802013**

**BRIAN C. WARD, EMPLOYEE**

**CLAIMANT**

**CJ MAHAN CONSTRUCTION COMPANY LLC,  
EMPLOYER**

**RESPONDENT**

**TRAVELERS INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENTS #1**

**DEATH & PERMANENT TOTAL  
DISABILITY TRUST FUND**

**RESPONDENT #2**

**OPINION FILED AUGUST 29, 2023**

**Hearing before Administrative Law Judge James D. Kennedy on July 25, 2023, in Little Rock, Pulaski County, Arkansas.**

**Claimant is *pro se* and appeared on his own behalf.**

**Respondents are represented by Mr. Guy Alton Wade, Attorney-at-Law of Little Rock, Arkansas.**

**The Trust Fund, represented by Ms. Christy L. King, Attorney-at-Law of Little Rock, waived its appearance on the Motion to Dismiss.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on July 25, 2023, in Little Rock, Arkansas, on Respondent #1's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant filed an AR-C on or about April 5, 2018, contending that he had injured his left knee and body while getting down off a bridge on November 30, 2017, while working on a bridge building project.

On or about January 12, 2023, respondent's #1 filed a Motion to Dismiss For Failure to Prosecute by letter and contended that the claimant had taken no action to request a *bona fide* hearing or to pursue his claim, that all benefits that the claimant was

entitled to had been paid, and consequently the matter should be dismissed. There was no record of the claimant filing a response to the Motion to Dismiss after and the hearing was set for July 25, 2023, after proper notice.

On the date of the hearing, the respondents were represented by Guy Alton Wade, who provided the claim had been accepted as compensable and that appropriate benefits had been paid. The claimant appeared *pro se*. The representative for the respondents provided that no action had been taken in this matter since September of 2021, when the rating was paid out. While under oath, the claimant admitted that he had previously had an attorney who had withdrawn, that he saw Dr. Edwards twice last year, and that he was also seeing Dr. Roman who had been prescribing his medications. The claimant testified that he was currently on social security disability and was receiving \$1600.00 a month, that his wife was taking care of him, and she was able to draw benefits from social security off him. Under cross-examination, the claimant admitted that he received a functional capacity examination and that he had been placed on “total light duty.” He also admitted that he had not applied for work.

After claimant’s testimony, the claimant was instructed that the matter would be taken under advisement for thirty (30) days and that he needed to take affirmative steps to pursue this matter and that he could contact the Legal Advisor Division or obtain an attorney. Further the claimant was advised that workers’ compensation required affirmative steps on his part and if he failed to take any affirmative action, the claim would be treated as if he had quit. The claimant’s father, who was in the courtroom and who had not been sworn, volunteered that the claimant would need a knee replacement every fifteen (15) years.

The claimant testified that he had originally had the Rainwater Firm representing him and that he had contacted the Hart Firm and other attorneys in regard to representation but had not retained an attorney at the time of the hearing.

After a review of the record as a whole, which includes all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the respondents, as well as the claimant's statements, and after taking the matter under advisement for thirty (30) plus days and the claimant taking no affirmative steps during that period of time to pursue his claim, there is no alternative but to find that that the Motion to Dismiss should be granted pursuant to Rule 099.13 of the Arkansas Workers' Compensation Act and Arkansas Code Annotated § 11-9-702.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE