

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H208850**

**RICKEY WHITE,
EMPLOYEE**

CLAIMANT

**LITTLE ROCK HAULING,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA,
INSURANCE CARRIER**

RESPONDENT

**ESIS, INC.,
TPA**

RESPONDENT

OPINION FILED NOVEMBER 26, 2024

Hearing conducted on Wednesday, November 6, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Mr. Rickey White, *Pro Se*, of Benton, Arkansas, did appear in person at the hearing.

The Respondents were represented by the Honorable Melissa Wood, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on November 6, 2024, in Little Rock, Arkansas. Claimant, according to Commission file, is *Pro Se*.

The Claimant worked for the Respondent/Employer as a driver. The date for Claimant's alleged injury was on November 17, 2022. He reported his injury to Respondent/Employer that same day. Respondents admitted into evidence Respondents' Exhibit 1, pleadings, consisting of 8 pages. Also admitted into evidence was blue-backed Pre-Hearing Order filed July 19, 2023, Melissa Wood letter dated August 4, 2023, Melissa Wood letter dated January 6, 2023, a copy of

certified return receipt returned to the Commission dated October 19, 2024, a copy of certified return receipt returned to the Commission on September 27, 2024, and copy of hearing notice, *as discussed infra*.

The record reflects on December 20, 2022, a Form AR-C was filed with the Commission, by then-attorney, Laura Beth York, purporting that Claimant injured his right shoulder, right hip, and right arm. Attorney Melissa Wood entered her appearance on behalf of the Respondents on December 28, 2022. On January 5, 2023, a Form AR-1 was filed with the Commission purporting that Claimant's injuries occurred when he tripped over an iron stopper. On January 6, 2023, Respondents filed a letter, on the behalf of Respondents, accepting compensability of the right shoulder, and right upper leg injuries. The letter also confirmed that benefits were being paid. A Pre-Hearing Conference was held on July 19, 2023, and a subsequent Pre-Hearing Order was filed the same date. On January 5, 2023, a Form AR-2 was filed by Respondents with no language denying compensability of the injury.

On July 19, 2023, a prehearing telephone conference was held followed by a Pre-Hearing Order filed the same day. The Order scheduled a full hearing for September 20, 2023, at the Commission. On August 4, 2023, Respondents submitted a letter agreeing to the surgery the Claimant wanted and requested that the September 20, 2023, hearing be canceled since no other issues were in dispute. The request was granted, and the full hearing was canceled. On August 8, 2024, Claimant's counsel filed a Motion to Withdraw as Counsel. The Full Commission granted Claimant's counsel Motion on August 30, 2024.

The Respondents next filed a Motion to Dismiss on September 6, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent, certified and regular U.S. Mail, notice of the Motion to Dismiss from my office on September 11, 2024, to his last known

address. The certified motion notice was unclaimed by Claimant as noted on the September 27, 2024, return receipt. The motion notice that was sent regular U.S. Mail was not returned to the Commission. Claimant did not provide a new address of record. Nevertheless, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of Respondents' Motion to Dismiss hearing date at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail, on October 3, 2024. The certified notice was not claimed according to the October 19, 2024, return notice; but the regular First-Class mail hearing notice was not returned to the Commission. The hearing took place on November 6, 2024. And as mentioned before, the Claimant did show up to the hearing.

The Claimant agreed to the Motion to Dismiss during the hearing. I have advised the Claimant, several times, that he does have the right to hire other counsel since his former attorney, Laura Beth York, withdrew from his case. I have further advised him of the Commission's legal advisers that could assist him, for free, with his claim. Despite the repeated admonition the Claimant expressed his need to work and that he will not contest the dismissal. Claimant did, however, voice his concern about the worsening of his injury since he continues to feel numbness. Claimant also advised that he has received his last benefit payment a week before this scheduled motion hearing. The Claimant and Respondents' counsel had a conversation off record about future claims. There the Claimant learned that he could refile his claim within a year of his last benefit payment; something he expressed when all parties were back on the record. With this understanding, the Claimant again expressed to the Commission, that he agrees with the dismissal without prejudice.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the November 6, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

III. DISCUSSION

AWCC 099.13 provides:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with reasonable notice, on the Respondents' Motion to Dismiss. Though the certified hearing notice was unclaimed, that same notice was also sent to the Claimant's address of record by First-Class U.S. Mail on October 3, 2024, and did not return to the Commission. The Claimant appeared

at the hearing and argued his position. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed his Form AR-C on December 20, 2023. Since the filing of Claimant's Form AR-C then, he has failed to request a hearing. Moreover, the Claimant has verbally agreed on the record, to the dismissal without prejudice. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim by failing to request a hearing. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted, and Claimant's claim is dismissed *without prejudice*.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge