

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G906986**

DOMINGO CRUZ-YEPEZ, EMPLOYEE	CLAIMANT
KELVIN ROSARIO-SIERRA, UNINSURED EMPLOYER	RESPONDENT#1
DAD'S ENTERPRISES, INC., UNINSURED EMPLOYER	RESPONDENT#2

AMENDED OPINION/ORDER FILED JULY 1, 2021

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondent #1 was unrepresented at the time of the hearing.

Respondent #2 is represented by WILLIAM C. FRYE, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 23, 2021, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A prehearing conference was conducted on April 22, 2021, and a prehearing order filed that same date. A copy of the prehearing order was marked as Commission's Exhibit No. 1 and made a part of the record without objection.

At 9:30 a.m. on June 23, 2021, the case was called to order and claimant, Domingo Cruz-Yepez did not appear. His attorney, Mr. Michael Hamby, was present and advised the court that he was not ready to proceed because his client was working in the state of Tennessee. Mr. Hamby reported to me that claimant maintained that he did not know anything about the hearing on June 23, 2021. Respondent #1 was also not present at 9:30 when court was convened. He did arrive after court was adjourned, having gone to the wrong building; I will return to the issues regarding Mr. Sierra's below.

Respondent #2 appeared through its attorney, Mr. William C. Frye and had a witness present from the state of Alabama, Ms. Debra Baldwin. After it was apparent that claimant was not going to appear to present his case, Mr. Frye made a motion to dismiss the claim against respondent #2. The motion was phrased in the alternative, with the first alternative being to dismiss without prejudice and require payment of respondent #2's expenses and attorney's fees for failing to attend the scheduled hearing before the matter can be refiled, or that the matter be dismissed with prejudice and respondent #2 would shoulder all its expenses and pay the court reporter's fee for this hearing in full.

On behalf of claimant, his counsel did not agree to the motion but did not think that dismissing without prejudice was unreasonable. Mr. Hamby requested that the claim against respondent #1, Kelvin Rosario-Sierra be left open. In rebuttal, Mr. Frye maintained that if his client had not shown up to defend itself, the case could have proceeded, and benefits awarded.

Following the arguments of counsel, given the expense respondent #2 incurred to appear at the scheduled hearing, I find that the Motion to Dismiss with prejudice is appropriate in this matter and as to respondent #2, it is granted.

Regarding respondent #1, Mr. Kelvin Rosario-Sierra entered the courtroom after the hearing was adjourned but before claimant's attorney, the court reporter and I had left the room; the matter was reconvened to address the claim against respondent #1. Claimant's attorney again recited that his client was not present and moved that the claim remain open as to respondent #2. Respondent #1 did not object to the motion. Claimant's counsel was advised that this matter will not be reset on the docket until counsel notifies the Commission that he has good contact with claimant and that claimant intends to appear at a hearing that would be set following a prehearing conference between claimant and respondent #1.

Therefore, it is Ordered that the claim against respondent #2, Dad's Enterprises, Inc., is

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dismissed with prejudice. Respondent #2 is ordered to pay the cost of the transcript for the June 23, 2021, hearing in the amount of \$205.55. Claimant's attorney will notify the Commission when he again has good contact with his client, and upon such notice, the matter regarding respondent #1, Kelvin Rosario-Sierra, will be rescheduled for a prehearing conference and subsequent full hearing.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE