

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H202790**

**BOBBY W. ZACHARY, EMPLOYEE**

**CLAIMANT**

**B & B SUPPLY STORES, LLC, EMPLOYER**

**RESPONDENT**

**ACCIDENT FUND INSURANCE COMPANY OF AMERICA,  
CARRIER / TPA**

**RESPONDENT**

**OPINION FILED JANUARY 24, 2023**

**Hearing before Administrative Law Judge James D. Kennedy on January 18, 2023,  
in Mountain Home, Baxter County, Arkansas.**

**Claimant is *pro se* and failed to appear.**

**Respondents are represented by their attorney, Mr. Brett Whitley, Attorney-at-Law,  
of Little Rock, Arkansas.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on January 18, 2023, in Mountain Home, Arkansas, on respondent'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 was *pro se* and failed to appear for the hearing. The claimant filed an Arkansas Form-C on April 11, 2022, contending that he had injured his back while loading heavy lumber on December 5, 2021, and consequently made several visits to the chiropractor. The respondents filed an Arkansas Form AR-1 on April 19, 2022, and an Arkansas Form AR-2, on May 17, 2022, where they provided that the claim was not accepted as compensable. No action occurred in the matter since the filing of the filing of the Form AR-2 with the Division of Operations and Compliance of the Arkansas Workers' Compensation Commission. A request for dismissal of the claim was made by letter on October 31, 2022.

An appropriate notice setting this matter for a hearing for a Motion to Dismiss on January 18, 2023, was provided to the claimant by both Certified and First-Class Mail. The claimant did not file a response and failed to appear on the hearing date in Mountain Home, Arkansas. At the time of the hearing, Mr. Brett Whitley 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 an opportunity to hear the statements of the attorney for the respondent, I find that this matter should be dismissed for failure to prosecute pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

**ORDER**

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE