

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H201787**

**BILLY B. BENNETT,
EMPLOYEE**

CLAIMANT

**TYSON POULTRY, INC.,
EMPLOYER**

RESPONDENT

**TYSON POULTRY, INC./
TYNET CORPORATION,
CARRIER/TPA**

RESPONDENT

**AMENDED OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JANUARY 19, 2023**

Hearing conducted on Wednesday, January 11, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Billy B. Bennett, pro se, of Nashville, Howard County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Lauren Scroggins, Roberts Law Firm, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, January 11, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2019 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Replacement).

The respondents filed a motion to dismiss with the Commission on November 14, 2022, requesting this claim be dismissed for lack of prosecution. Pursuant to the applicable law, the claimant was mailed a copy of the respondents' motion to dismiss and the subject hearing notice in advance of the hearing which he received on November 21, 2022. (Commission Exhibit 1). Thereafter, the claimant failed and/or refused to either respond to the respondents' motion in any way, or to appear at the subject hearing.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively reveals the claimant has failed and/or refused to prosecute his claim at this time.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having been mailed due and legal notice of both the respondents' motion and the subject hearing notice, the claimant failed and/or refused to respond to the motion in any way and failed and/or refused to appear at the subject hearing. Therefore, the claimant has waived his right to a hearing on the respondents' motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to either request a hearing within the last six (6) months, and he has failed and/or refused to take any action(s) to prosecute his claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed on November 14, 2022, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This Order shall not be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and, on his behalf, from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

Billy B. Bennett, AWCC No. H201787

The respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp