

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F309228**

**SHAUN BEST,
EMPLOYEE**

CLAIMANT

**McDONALD'S,
EMPLOYER**

RESPONDENT NO. 1

**AR McDONALD'S DELF-ISNURED TRUST/
RISK MG'T RESOURCES, INC.
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

**STATE OF ARKANSAS,
SECOND INJURY FUND**

RESPONDENT NO. 2

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MARCH 15, 2022**

Hearing conducted virtually via "Zoom" on Tuesday, March 15, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, Little Rock, Pulaski County, Arkansas.

The claimant, Shaun Best, Ed.D., pro se, of Beaumont, Jefferson County, Texas, appeared at the hearing virtually via "Zoom."

Respondent No. 1 was represented by the Honorable Carol Worley, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas, who appeared at the hearing virtually via "Zoom."

Respondent No. 2 was represented by the Honorable David L. Pake, State of Arkansas, Second Injury Fund (the Fund), Little Rock, Pulaski County, Arkansas, appeared at the hearing virtually via "Zoom."

STATEMENT OF THE CASE

A virtual hearing was conducted via "Zoom" on Tuesday, March 15, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Replacement) and Commission Rule 099.13 (2021 Lexis Repl.), and/or other applicable reasons which were discussed at the prehearing teleconference of January 26, 2022. Before the conclusion of the January 26, 2022, prehearing conference, Respondent No. 1's

attorney made an oral motion to dismiss this claim without prejudice for lack of prosecution, which she then followed up with a formal, written motion to dismiss without prejudice for lack of prosecution filed January 26, 2022, based on the aforementioned applicable statute and Commission rule. (Respondent No. 1's Exhibit 1 at 12-14). Respondent No. 2 joined in Respondent No. 1's motion to dismiss.

After some discussion before the conclusion of the January 26, 2022, prehearing teleconference, the claimant did not object to Respondent No. 1's motion to dismiss; however, some time after the prehearing teleconference the claimant called the ALJ's office and requested a hearing on the motion in order that he could have the opportunity to be heard. Although he called a number of attorneys to assist him in a matter(s) that were outside the Commission's jurisdiction, and he also inquired of both Texas and Arkansas attorneys as to whether they would be willing to represent him at the subject hearing, he was unable to find an attorney, and he testified under oath he was comfortable proceeding with the subject hearing pro se.

Pursuant to the claimant's request, the ALJ's office scheduled a virtual hearing on Respondent No. 1's motion to dismiss, which hearing was conducted virtually via "Zoom" on March 15, 2022, and resulted in this opinion and order filed the same date, March 15, 2022. The claimant was provided due and proper legal notice of this hearing as provided by the applicable law and, as state above, he participated in the virtual hearing along with Respondents Nos. 1 and 2 and the ALJ via "Zoom."

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 Respondent No. 1's motion to dismiss. As was discussed on the record at the hearing, this claim involves a compensable minor head injury the claimant sustained while working for Respondent No. 1, McDonald's (McDonald's), on or about August 11, 2003. Prior to working for McDonald's, the claimant sustained a number of serious head injuries which resulted in balance problems for which he received treatment both before and after the subject injury date. It appears this preexisting and ongoing balance problem that resulted from the serious head injuries is what caused the claimant to fall at work at McDonald's on August 11, 2003.

As Respondent No. 2's attorney noted on the record at the subject hearing, and as is reflected in the Commission's file, the claimant was released some time back in 2004 with respect to the subject minor compensable injury without any permanent anatomical impairment. Respondent No. 1 last paid indemnity benefits related to the compensable injury on or about September 3, 2003, and last paid a medical bill (an MCO fee to Systemedic) on or about March 22, 2007. (RX No. 1 at 1; 9).

On January 11, 2007, the claimant himself filed a Form AR-C for additional benefits, placing an "X" in all of the boxes listed under the heading, "**CLAIM INFORMATION**". (RX No. 1 at 11). The Commission's file reflects the claimant did not request a hearing until December 10, 2021, at which time the Commission clerk's office assigned and forwarded the claimant's file to the ALJ. Thereafter, the parties filed their respective responses to the prehearing questionnaire, and the ALJ's office scheduled the January 26, 2022, prehearing teleconference.

Both at the January 26, 2022, prehearing teleconference, and at the subject hearing on Respondent No. 1's motion to dismiss, the claimant mentioned his pre- and post-injury balance issue was ongoing. He stated his reason for requesting a hearing was that the Commission issue and enter an order requiring the Beaumont, Texas, school district or some other appropriate authority in Beaumont, Texas to allow him to work as an elementary school teacher. Some of the claimant's emails contained in the Commission's file reflect he now holds a Doctorate in Education, a degree he apparently has earned after the subject compensable injury. The claimant's emails in the Commission's file also reflect he held an Associate's degree, and was pursuing a Bachelor's degree at some point after the date of his compensable injury. However, of course, the Commission is without any jurisdiction pursuant to *Ark. Code Ann.* Section 11-9-101, *et seq.* (2021 Lexis Repl.).

It appears from the Commission's file, and as the claimant testified at the subject hearing, he has been involved in a great deal of work, both in Arkansas in Texas, in promoting various safety measures designed to prevent head injuries for both children and adults. Moreover, the claimant has worked with Texas members of the United States House of Representatives and United States Senate, as well as the National Institutes of Health (NIH), Harvard University, and other organizations promoting safety measures designed to prevent head injuries, and in advocating for people who have sustained head injuries. The claimant expressed his concerns that not only he, but others who have sustained serious head injuries, are the subject of unfair discrimination. The claimant testified he has been recognized for this work by various entities and organizations, and was awarded the "Arkansas Spirit Award" by one of the Little Rock, Arkansas, television stations when he lived in Arkansas. The claimant is to be highly commended for this

good, hard, and selfless work on behalf of not only himself, but all those who have sustained serious head injuries.

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 the subject August 11, 2003, workers' compensation claim.
2. The Commission is without jurisdiction to issue an order requiring the Beaumont, Jefferson County, Texas school district, or any other appropriate authority in Texas (or, for that matter, in Arkansas) requiring them to employ the claimant as an elementary school teacher. This is not an issue that falls within the Commission's jurisdiction pursuant to *Ark. Code Ann.* Section 11-9-101, *et seq.*
2. The claimant did not timely prosecute the subject Arkansas workers' compensation claim after he filed the Form AR-C with the Commission on January 11, 2007. In addition, he did not and has not requested a hearing within the last six (6) months on any issue over which the Commission has jurisdiction.
4. Therefore, Respondent No. 1's motion to dismiss without prejudice filed with the Commission on January 26, 2022, should be and hereby is GRANTED; and this claim 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 opinion and 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).

The respondents shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp