

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE N<sup>o</sup> H305360**

**DERICK A. GARDNER, EMPLOYEE**

**CLAIMANT**

**PRODUCERS RICE MILL, EMPLOYER**

**RESPONDENT**

**FARMINGTON CASUALTY CO./THE TRAVELERS  
INDEMNITY COMPANY, CARRIER/TPA**

**RESPONDENT**

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**OPINION FILED 13 JUNE 2024**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 13 June 2024 in Pine Bluff, Arkansas.

The *pro se* claimant did not appear.

Mr. Guy Wade, Friday, Eldridge & Clark, LLP, appeared for the respondents.

**STATEMENT OF THE CASE**

A hearing on the respondents' Motion to Dismiss was held on this matter in Pine Bluff, Arkansas, on 13 June 2024. This case relates to an alleged workplace injury, sustained on or about 11 August 2023. A First Report of Injury was filed on 21 August 2023 and a Form 2 was filed the following day, denying the claim on statutory grounds.

On 24 January 2024, the respondents requested a dismissal of this matter for failure to prosecute the claim. See Exhibit N<sup>o</sup> 1. A letter from the Commission to the claimant communicating that motion was dated 3 April 2024 and another letter setting a hearing on the motion was dated 26 April 2024. The Commission's file is absent any responsive correspondence from the claimant. I noted at the hearing that mailings from the Commission to claimants are sent via both First Class and Certified Mail with return receipts requested. Returned mail is regularly appended to the Commission's file. This

claim file includes only a return of the April 3<sup>rd</sup> Certified Letter that indicates its return as “unclaimed.”

The respondents appeared on 13 June 2024, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the file reflects no request for a hearing on a claim in the relevant time preceding the filing of their motion. And the claimant did not appear at the hearing to resist the dismissal of this claim.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 99.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents’ counsel, I find that the respondents’ Motion to Dismiss should be granted and that the matter should be dismissed without prejudice.

**ORDER**

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE