

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H003658**

**LAVAR HUGHES,  
EMPLOYEE**

**CLAIMANT**

**CROUSE LOGGING CO., INC.,  
EMPLOYER**

**RESPONDENT**

**PRAETORIAN INS. CO./  
MIDWESTERN INS. ALLIANCE, LLC,  
CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED MARCH 8, 2023**

Hearing conducted on Wednesday, March 8, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Lavar Hughes, is represented by the Honorable Philip M. Wilson, Attorney at Law, Pulaski County, Arkansas. Neither the claimant nor his attorney appeared at the hearing.

The respondents were represented by the Honorable Allison Scott, Anderson, Murphy & Hopkins, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Wednesday, March 8, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Replacement). This hearing was rescheduled from January 31, 2023, due to inclement weather.

The respondents filed a motion to dismiss with the Commission on November 30, 2022, requesting this claim be dismissed for lack of prosecution. Pursuant to the applicable law, both the claimant and his attorney were mailed a copy of the respondents' motion to dismiss and the subject hearing notice in advance of the hearing. The United States Postal Service's (USPS), First Class Mail, Return Receipt demonstrates the claimant received notice of the original hearing date via

certified mail on January 5, 2023. (Commission Exhibit 1). The Commission's file indicates that both the claimant's and respondents' attorneys received notice of the rescheduled February 8, 2023, hearing date via email dated February 6, 2023.

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 date (both the original date and the rescheduled hearing date), the claimant neither inquired concerning or responded to the motion in any way; and he did not appear, nor cause anyone to appear on his behalf, 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 request a hearing, 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 30, 2022, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 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).

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

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp