

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H109094**

**BRIAN MERRILL,
EMPLOYEE**

CLAIMANT

**CITY OF JONESBORO,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE.,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JUNE 10, 2024

Hearing conducted on Wednesday, May 24, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Mr. Brian Merrill was represented by the Honorable Phillip J. Wells, Jonesboro, Arkansas.

The Respondents were represented by the Honorable Mary K. Edwards, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on May 24, 2024, in Forrest City, Arkansas. No testimony was taken in the case. Claimant's attorney appeared at the hearing to respond to the motion.

The Claimant worked for the Respondent/Employer as a police officer. The Claimant was allegedly injured when a third party failed to yield resulting in a traffic collision on November 10, 2021. Admitted into evidence was Respondent Exhibit 1, medical records, consisting of fifteen pages. Respondent Exhibit 2, correspondence, and pleadings, consisting of thirteen pages. I have also blue-backed Form AR-1, Form AR-2, and Form AR-C, *as discussed infra*.

The record reflects on January 10, 2022, a Form AR-C was filed with the Commission by Attorney Phillip Wells. This form reflects that Claimant, while transporting an inmate to the county

jail, was struck by another vehicle that ran a red light on November 10, 2021. Claimant allegedly sustained a head laceration, face scratches, and an open tibia and fibula fracture to the right leg. These injuries were reported to the Respondent/Employer the same day as the vehicle incident. On November 15, 2021, a Form AR-1 was filed in this case, reflecting that Claimant was purportedly involved in a traffic collision. Respondents on November 24, 2021, filed a Form AR-2, that stated no grounds for disputing the claim. The Respondents officially accepted the claim via letter dated February 11, 2022. Since that time benefits have been paid.

On February 28, 2024, Respondents filed a Motion to Dismiss citing Claimant's failure to prosecute his claim. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the Motion to Dismiss hearing date at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was claimed by Claimant on March 21, 2024. The hearing took place on May 24, 2024.

Claimant's counsel, during the hearing, opposed the motion stating that Claimant wants to keep the claim open for future medical. Claimant's counsel did admit that all required benefits have been paid by the Respondents; and there is no need for a full-hearing. Both parties have agreed that there are no issues to litigate in this claim. The last date that benefits were paid was on July 19, 2023.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.

2. The Claimant and Respondents both had reasonable notice of the May 3, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Respondents argued that all benefits were paid. The last benefit payment was made on July 19, 2023. No other benefits have been requested by Claimant since that date. Claimant's counsel did not dispute the payment of benefits rather wanted to keep the claim open for future medicals. Claimant counsel agreed that there are no disputed issues with this claim. Essentially, Claimant's counsel wants the claim to be held open in perpetuity in the event of future medicals. This position runs counter to AWCC Rule 099.13.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant has filed his Form AR-C on January 10, 2022. Since then, Claimant has taken no action in furtherance of the prosecution of this claim. Therefore, I do find the Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim. And as a result, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is granted and this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge