

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H207385**

**BRUCE OVERMAN,
EMPLOYEE**

CLAIMANT

**AMERICAN GREETINGS CORP.,
SELF-INSURED/EMPLOYER**

RESPONDENT

**AMERICA ZURICH INS. CO.,
CARRIER/THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JULY 9, 2024

Hearing conducted on Wednesday, June 28, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Mr. Bruce Overman, *pro se*, of Blytheville, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Eric Newkirk, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on June 28, 2024, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Admitted into evidence was Respondent Exhibit 1, pleadings, and correspondence, consisting of fifty-seven pages. I have also blue-backed Forms AR-1, AR-2, and AR-C, *as discussed infra*.

The record reflects on October 13, 2022, a Form AR-C was filed by Claimant's then-attorney, Scott Hunter, reflecting that he purportedly injured his back on February 7, 2022. How he injured his back was not stated in this form. Claimant requested a hearing on October 31, 2022. Based on this request, prehearing documents were sent out and returned followed by a prehearing telephone conference that took place on February 15, 2023. A prehearing order was filed on

February 22, 2023, setting the full hearing for April 14, 2023, in Jonesboro, Arkansas. The full hearing was continued and reset by letter dated April 19, 2023, for June 9, 2023. On May 31, 2023, the parties again requested a continuance and that the file be sent to general files. This request was granted on June 2, 2023. Respondents next filed a Motion to Dismiss on January 8, 2024. The bases for the motion were a lack of prosecution by the Claimant. Claimant was sent certified notice of the Motion to Dismiss from the Commission on January 24, 2024. The Claimant received that notice on January 27, 2024, at his last known address. The Claimant had twenty days to respond to the Motion to Dismiss. The Claimant did not respond to the Motion to Dismiss.

In the interim, Claimant's attorney, Scott Hunter, filed a Motion to Withdraw as counsel on February 22, 2024. This motion was granted on February 27, 2024. And since the Claimant has failed to object to both the Motion to Withdraw and the Motion to Dismiss in writing, a hearing notice for the Motion to Dismiss must be sent out. Therefore, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the hearing date via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was served on May 16, 2024. Likewise, the regular First-Class mail hearing notice was not returned to the Commission. The hearing took place on June 28, 2024. And as previously mentioned, the Claimant did not show up to the hearing.

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 June 28, 2024, hearing.

3. Respondents have proven by a 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. Commission Exhibit 1 provides multiple Certified U.S. Mail Return Receipts. One receipt dated May 16, 2024, was claimed by the Claimant. This receipt establishes that the Motion to Dismiss hearing notice was served on the Claimant. Respondents' counsel was at the hearing and argued the motion. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

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 filed his Form AR-C on October 13, 2022. Claimant immediately requested a hearing and has since then requested continuances for the two hearings that were set. When notice of the Motion to Dismiss was received by Claimant on January 27, 2024, he failed to respond to the Motion by objecting and requesting another hearing in writing. Moreover, despite receiving the hearing notice for the Motion to Dismiss, Claimant failed to appear. The Claimant has clearly abandoned his claim by not doing the bare minimum in prosecuting his claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim by failing to request a hearing. Thus, 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, *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge