

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H107574**

**JOHN H. PROTZMANN,
EMPLOYEE**

CLAIMANT

**TRACTOR SUPPLY CO., INC.,
EMPLOYER**

RESPONDENT

**STARR SPECIALTY INS. CO., INC./
GALLAGHER BASSETT SERVICES, INC.
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JUNE 30, 2022**

Hearing conducted on Wednesday, June 29, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. John H. Protzmann, of Hot Springs, Garland County, Arkansas, pro se, at the hearing.

The respondents were represented by the Honorable Eric Newkirk, Mayton, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, June 29, 2022, 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 Repl.).

The respondents filed a motion to dismiss and brief in support thereof with the Commission on May 5, 2022, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of the both the respondents' motion to dismiss, as well as a copy of the hearing notice at his current addresses of record via the United States Postal Service (USPS), First Class, Certified Mail, Return Receipt requested, which he received as demonstrated by both the USPS return of service

document the claimant signed, and his actual appearance at the hearing. (Commission Exhibit 1). Thereafter, the claimant did in fact appear at the hearing.

The claimant is an obviously intelligent, articulate, amiable gentleman. He testified under oath that he had talked to two (2) well-known Arkansas workers' compensation attorneys, both of whom had access to and reviewed all his relevant medical records. After doing so, each of these attorneys who are well-known to the Commission were unwilling to represent the claimant because they did not believe he could prevail on the particular facts of this case apparently due to, among other reasons, preexisting compression fractures in the area of the his thoracic spine which had been symptomatic at various times in the past, and for which he has been prescribed and from time-to-time wears a thoracic spine brace on an as needed basis. In fact, the claimant was wearing the thoracic spine brace at the time of the subject hearing, although he testified, he does not always need to wear it.

The claimant is a certified electrician, but he has not worked directly in this field for some time now. He testified he is still considered an employee of the respondent-employer, Tractor Supply Co., Inc. (Tractor Supply). He said he would like to return to work and believed he could do so depending upon the physical requirements of the job. The claimant currently draws Social Security retirement income (SSRI). However, he does not draw Social Security Disability (SSD) benefits. The claimant testified he did not wish to keep his claim open, and that he does not object to its dismissal. He testified further he fully understood the legal and practical effect of his claim's dismissal and that, should he change his mind and decide to pursue the claim, he must file a new Form AR-C with the Clerk of the Commission on or before December 8, 2022, since the work incident in question occurred on December 8, 2020, and has been controverted in its entirety.

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, by reference.

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 demonstrates the claimant has made an informed decision not to pursue this claim.

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 received due and legal notice of the respondents' motion to dismiss, as well as due and legal notice of the subject hearing, the claimant appeared pro se at the hearing and testified under oath he did not wish to pursue this claim, and had no objection to the respondents' motion to dismiss filed with the Commission on May 5, 2022.
3. If the claimant changes his mind and decides to pursue and prosecute this claim, he must file a new Form AR-C with the Clerk of the Commission on or before December 8, 2022, since the work incident in question occurred on December 8, 2020.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on May 5, 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 refileing 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