

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H006644

PHILLIP REESE, EMPLOYEE	CLAIMANT
HOLLOWELL INDUSTRIES, LLC, EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY CO., CARRIER/TPA	RESPONDENT

OPINION FILED 25 JANUARY 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe, 24 January 2024, in Little Rock, Pulaski County, Arkansas.

The *pro se* claimant failed to appear.

Ms. Amy C. Markham, Attorney-at-Law of Little Rock, Arkansas, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 24 January 2024. This case relates to a workplace injury sustained on 3 September 2020. A First Report of Injury was filed with the Commission on 14 September 2020 indicating that the claimant's arm was injured when it was caught in machinery. A Commission Form AR-2, dated 16 September 2020, was then filed noting that the carrier accepted the claim as compensable and was paying benefits. An initial Form C was filed on the claimant's behalf on 22 September 2020 and then another of the same was filed on 4 August 2022, noting Ms. Laura Beth York as the claimant's counsel.

A Prehearing Telephone Conference was scheduled on this matter for 21 February 2023, but that was canceled upon the claimant's request about a month before that conference. The matter was returned to the Commission's General Files at the same time the conference was canceled. Then, on 21 June 2023, Ms. York moved to be relieved as counsel.

In an Order dated 13 September 2023, the Full Commission granted that Motion. The respondents filed their Motion to Dismiss on 27 November 2023, stating that the claimant had not sought a hearing on any matter at controversy in the six (6) months preceding that filing.

Notice of the respondents' Motion, and then notice of a hearing date for that Motion was sent to the claimant on 1 December 2023 and 22 December 2023, respectively. I will note that it is the Commission's practice for any mail sent to a *pro se* claimant regarding Motions to Dismiss be sent via USPS First-Class mail and USPS Certified Mail. Returned or undeliverable mail is added to the claimant's file. The First-Class mailings of the above-noted notices were not returned to the Commission, but a notice for Certified Mail being undeliverable was returned to the Commission dated 6 January 2024..

The claimant did not file an objection to the dismissal or appear at the hearing to argue against the respondents' Motion. 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 that motion. Notice of that Motion, and notice of the hearing on that Motion was sent to the address provided by the claimant, and the claimant chose not to appear to resist the motion to dismiss this action. The respondents appeared, presented their Motion, and offered supporting evidence into the record.

Arkansas Code Annotated §11-9-702(a)(4) states that a matter may be dismissed without prejudice after six (6) months without a *bona fide* request for a hearing. Commission 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.

VI. ORDER

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

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE