

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H204473**

PHIL STUARD, EMPLOYEE	CLAIMANT
AMERITIES FOUNDERS, LLC, EMPLOYER	RESPONDENT
CHARTIS PROPERTY CASUALTY COMPANY, INSURANCE CARRIER	RESPONDENT
AIG, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED JUNE 21, 2023**

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, failed to appear for the hearing.

Respondents represented by the Honorable Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on June 20, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute pursuant to the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the June 20, 2023, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record.

It is hereby incorporated herein by reference. The Respondents' Hearing Exhibit Index consisting of one cover page and eleven numbered pages was marked as Respondents' Exhibit 1.

### **Discussion**

On September 28, 2022, the Claimant's attorney filed with the Commission a claim for workers' compensation benefits on behalf of the Claimant by way of a Form AR-C. Specifically, the Claimant's attorney alleged: "Claimant was in the course and scope of employment and sustained injury to his back and other whole body." Per this form, the Claimant's injury occurred on June 14, 2022. His attorney checked all the boxes for both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on June 28, 2022, wherein they accepted compensability of the claim for a strain to the Claimant's cervical, thoracic and lumbar spine.

On or about December 1, 2022, the Claimant's attorney filed with the Commission a letter-motion to be relieved as counsel of record. The Full Commission entered an order granting the motion for Claimant's attorney to withdraw as counsel for the Claimant in this matter on or about December 13, 2022.

Since this time and the filing of the Form AR-C, there has been no action taken on the part of the Claimant to prosecute this claim, or otherwise pursue benefits.

As a result, on March 29, 2023, the Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to the Claimant. Specifically, the Respondents mailed a copy of the said motion to the Claimant via the United States Postal Service.

The Commission sent a notice to the Claimant's last known address on March 29, 2023, informing him of the Respondents' motion for dismissal. Per this correspondence, the Claimant was given a deadline of twenty days for filing a written response to the Respondents' motion.

Subsequently, the United States Postal Service informed the Commission that on April 1, 2023, the above referenced letter that the Commission sent to the Claimant, notifying him of the motion to dismiss was delivered to his home and left with an individual. However, the signature of the individual signing for delivery of this letter is scribbled.

Yet, there was no response from the Claimant.

Therefore, pursuant to a Hearing Notice dated May 12, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for June 20, 2023, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

The United States Postal Service informed the Commission that on May 19, 2023, the letter apprising the Claimant of the hearing on the Respondents' motion to dismiss was delivered to his home and left with a certain individual. Yet again, the signature of the individual taking delivery of the Hearing Notice is illegible.

Nevertheless, thus far there has been no response from the Claimant.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney.

Counsel essentially noted that the Claimant has failed to prosecute his claim for workers' compensation benefits. Counsel also noted that there has been no attempt on the part of the Claimant to prosecute his claim since the filing of the Form AR-C over almost nine months ago. Per counsel for the Respondents, the Claimant was released from medical care on November 21,

2022, with a zero percent impairment. Therefore, counsel moved that this claim be dismissed without prejudice under Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

The record before me demonstrates that a request for a hearing has not been filed by or on behalf of the Claimant since the filing of the Form AR-C, which was approximately nine months ago in September 2022. Of significance is the Claimant's failure to appear at the dismissal hearing. Moreover, the Claimant has made no effort whatsoever to object to the dismissal of his claim, nor has he responded to the notices of this Commission. Hence, the preponderance of the evidence proves that the Claimant has failed to prosecute his claim for workers' compensation benefits. This is a clear illustration that the Claimant has abandoned his claim. Therefore, based on the foregoing facts, the dismissal of this claim is well-founded, without prejudice, to the refiling of it within the limitation period specified by law. That said dismissal should be and is hereby made pursuant to the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On September 28, 2022, the Claimant's attorney filed a Form AR-C, with the Commission, alleging that the Claimant sustained an injury to his back and other whole body while working for the respondent-employer on June 14, 2022.
3. The respondent-insurance-carrier filed a Form AR-2, with the Commission on or about June 23, 2022, accepting this claim as compensable for a strain to the Claimant's cervical, thoracic, and lumbar spine.

4. Since the filing of the Form AR-C virtually nine months ago, the Claimant has failed to prosecute his claim and taken no action whatsoever to pursue it.
5. On March 29, 2023, the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute. A hearing was held on the motion, but the Claimant failed to appear at the hearing, and he has not objected to his claim being dismissed or responded to the notices of this Commission.
6. The evidence preponderates that the Claimant has failed to prosecute this claim under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.
7. Appropriate notice of the motion and dismissal hearing was had on the Claimant to his last known address, in the manner prescribed by law.
8. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, without prejudice pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice, to the refiling of it within the limitation period specified by law.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**