

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H208062**

**DONOVAN WARREN,
EMPLOYEE**

CLAIMANT

**AGERTON TIMBER, LLC,
EMPLOYER**

RESPONDENT

**PRAETORIAN INS. CO./SEDGWICK CLAIMS MG'T
SERVICES, INC.
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER FILED SEPTEMBER 14, 2023,
HOLDING RESPONDENTS' MOTION TO DISMISS WITHOUT PREJUDICE IN
ABEYANCE FOR 45 DAYS**

Hearing conducted on Thursday, September 7, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in El Dorado, Union County, Arkansas.

The claimant, Mr. Warren Donovan, pro se, of Strong, Union County, Arkansas, appeared in person at the hearing.

The respondents were represented by the Honorable Randy P. Murphy, Anderson, Murphy & Hopkins, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Thursday, September 7, 2023, 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 (MTD) with the Commission on June 28, 2023, 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 both the respondents' MTD 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 evidenced by the fact he appeared in person at the hearing. At the hearing, the claimant respectfully objected to the respondents' MTD without prejudice.

The claimant and the respondents' attorney had an opportunity to visit in person before the hearing commenced. On the record at the hearing the parties mutually agreed to request the ALJ hold a ruling on the respondents' MTD in abeyance for a period of 45 days – which would be Sunday, October 22, 2023, thereby making the 45-day deadline **Monday, October 23, 2023**, since the actual deadline falls on a weekend – in order to allow the respondents sufficient time for the claimant to sign and provide the respondents an updated Health Insurance Portability and Accountability (HIPAA)-compliant medical release; to obtain any and all outstanding medical bills and records; and for the parties to attempt to amicably resolve any and all outstanding issues, if any. The parties also advised the ALJ there was a good chance the claim may be resolved via a joint petition settlement agreement once the claimant provided the respondents with the required medical release so they may obtain any and all relevant medical records and other necessary documentation, if any. **The ALJ strongly encouraged the claimant to retain the services of a workers' compensation attorney to represent him in this matter.**

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 claim 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' MTD. Rather than recite a detailed analysis of the record, the preponderance of the evidence adduced at the hearing revealed the parties mutually agreed the ALJ hold a decision on the respondents' subject MTD in abeyance for a period of 45 days for the reasons set forth above.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, and as I advised the parties on the record at the hearing, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. The ALJ strongly encourages the claimant to retain the services of a workers' compensation attorney to represent him in this matter.
3. The ALJ will hold in abeyance a decision on the respondents' subject MTD without prejudice for a period of 45 days, or until **Monday, October 23, 2023**, since 45 days from the hearing date falls on Sunday, October 22, 2023.
4. The parties have 45 days from the hearing date, or until **Monday, October 23, 2023**, to obtain any and all additional information they require and to attempt to resolve any and all outstanding issues, if any remain, and/or to settle this claim via a joint petition settlement agreement.
5. If the parties are unable to resolve any and all outstanding issues; and/or **within five (5) days** after the expiration of this 45-day time-period the claimant fails and/or refuses to request, in writing (with a copy to the respondents' attorney, of course), a hearing before the Commission and to advise both the Commission and the respondents exactly what specific issue(s) he believes are ripe for a hearing, the ALJ shall grant the respondents' MTD without prejudice filed June 28, 2023, without the necessity of either the respondents filing another motion, and without holding another hearing on the subject motion.

If they have not already done so, the respondents shall pay the court reporter's invoice within twenty (20) days of the filing of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp