

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NOS. H301708 & H301713**

**FREDERICK WILLIAMS,
EMPLOYEE**

CLAIMANT

**HI-WAY PAVING, INC.,
EMPLOYER**

RESPONDENT

**CINCINNATI CASUALTY CO./
CINCINNATI INS. CO.
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION TO DISMISS WITHOUT PREJUDICE
FILED MARCH 21, 2024**

Hearing conducted on Tuesday, March 19, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Frederick Williams, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Karen H. McKinney, Barber Law Firm, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, March 19, 2024, to determine whether these two (2) separate claims should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Replacement).

The respondents filed a motion to dismiss without prejudice (MTD) with the Commission on January 19, 2024, requesting these claims be dismissed without prejudice for lack of prosecution. Consistent with the applicable Arkansas law, the Commission mailed a copy of both the respondents' MTD, and the subject hearing notice via the United States Postal Service (USPS), Certified Mail, Return Receipt Requested, by letter dated February 15, 2024, to his last known

address of record with the Commission. (Commission Exhibit 1; Respondents' Exhibit 1). Thereafter, the claimant failed and/or refused to respond in any way to either the Commission or to the respondents; and he failed and/or refused to appear at the subject hearing. The claimant never objected in any way to the respondents' MTD.

It should be noted the claimant was represented by counsel at the time both of these two (2) claims were filed on his behalf; however, by motion filed with the Commission on December 1, 2023, the claimant's attorney requested to withdraw as his counsel. By Commission order filed January 9, 2024, the Full Commission granted the claimant's attorney's motion to withdraw as counsel. (RX1 at K).

I hereby incorporate the facts stated in the respondents motion to dismiss filed January 9, 2024, as though they were set forth word-for-word herein.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Repl.), 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, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has both failed and/or refused to prosecute his two (2) claims, and he has failed and/or refused to request a hearing within the last six (6) months on the two (2) claims.

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 the Commission mailed due and legal notice of the respondents' MTD filed January 9, 2024, to the claimant's last known address of record with the Commission, the claimant failed and/or refused to respond to the motion in any way; failed and/or refused to object to the subject MTD; and failed and/or refused to request a hearing on either or both of the two (2) subject claims.
3. The claimant failed and/or refused to appear at the subject hearing and, therefore, has waived his right to a hearing on the MTD.
4. The claimant has failed to request a hearing either on the merits, or on any issue related to either of these (2) claims within the last six (6) months.
5. The respondents' MTD without prejudice filed with the Commission on January 9, 2024, should be and hereby is GRANTED.
6. Therefore, the two (2) aforementioned subject claims hereby are dismissed without prejudice to their refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion 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 refiling either or both of these two (2) claims *if* the claim(s) is (are) 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 twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp