

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G908302

GARY LEON WINN (Dec'd), EMPLOYEE

CLAIMANT

CONLEY TRANSPORT II, INC. EMPLOYER

RESPONDENT

**CHEROKEE INSURANCE COMPANY,
CARRIER/TPA**

RESPONDENT

OPINION FILED APRIL 18, 2023

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas, on April 18, 2023.

Claimant is represented by Phillip Wells, Attorney-at-Law, of Jonesboro, Arkansas, who waived the right to appear after discussing the matter with family members and confirming that the claimant is deceased.

Respondents are represented by R. Scott Zuerker , Attorney-at-Law, of Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled matter on April 18, 2023, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant passed away on January 7, 2023. The claimant's death was determined to not be related to the accepted workers' compensation injury where the claimant had been determined totally disabled. An AR-C form had been filed on or about January 27, 2020, alleging that the claimant had sustained a work-related injury on November 25, 2019. More than six (6) months have passed since the claimant's last actions in this matter. A request for the matter to be dismissed was made by the respondents on March 9, 2023, and the claimant's representative filed a response, waiving the right to appear and affirmatively stating that the claimant was deceased.

A hearing was set for April 18, 2022, after proper notice to the parties, in regard to the Motion to Dismiss. The claimant and his representative did not appear at the hearing. At the time of the hearing, Scott Zuerker appeared on behalf of the respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having had an opportunity to hear the statements of the respondent's attorney, there is no alternative but to find that the Motion to Dismiss should be granted at this time, and the matter should be dismissed with prejudice.

ORDER

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed with prejudice at this time.

IT IS SO ORDERED:

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE