

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H404694**

CLAYTON B. ABEL, EMPLOYEE

CLAIMANT

EASTER SEALS ARKANSAS, EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER/TPA

RESPONDENT

OPINION FILED **JUNE 2, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant is *pro se* and did not appear at the hearing.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 19, 2025, the above captioned claim came on for a hearing at Fort Smith, Sebastian County, Arkansas. A pre-hearing conference was conducted on April 10, 2025, and a pre-hearing order was filed on April 18, 2025. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

There were no stipulations entered between the parties, as respondents denied claimant was an employee and therefore the Commission did not have jurisdiction over his claim.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant was an employee of respondent, Easter Seals Arkansas, on October 10, 2022.
2. If so, did claimant suffer a compensable injury on October 10, 2022.
3. If so, is the claimant entitled to medical benefits and indemnity benefits.

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4. If so, is the claimant entitled to mileage for doctor's visits.

All other issues are reserved by the parties.

The claimant contends that "On October 10, 2022, the accident occurred. He was lifting a 44-pound bag of dog food for a customer. The department manager, Ron, was not there. Clayton felt something pop in his left shoulder. He immediately told the teacher in charge, Sara Duren, of Southside High School in Fort Smith. Ms. Duren responded back "if I can handle it, you can handle it" and Clayton continued his work shift that day. The claimant came home that evening complaining of left shoulder pain, and Christina took him to the doctor the next day October 11, 2022, with his PCP at UAMS Fort Smith. The injury at the time of initial visit was a possible torn rotator cuff. The PCP ordered the claimant pain meds, MRI."

The respondents contend that "Arkansas Workers' Compensation Commission does not have jurisdiction of this matter, as there was no employer-employee relationship at the time of the incident. Claimant was participating in a school program to get work experience and was never deemed an actual employee. This participation was through a grant program with Easter Seals where claimant was a student at the time of the incident. In light of this, it is respondents' position that the Commission does not have jurisdiction of this matter and should dismiss this claim accordingly. Alternatively, it is respondents' position that the medical documentation does not support a compensable injury, no does it support entitlement to benefits under the Act in the event compensability is found."

From a review of the entire record, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Claimant failed to appear at the hearing of this matter, and therefore failed to establish this Court has jurisdiction of his claim.

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2. Respondents' motion to dismiss this matter pursuant to Arkansas Workers' Compensation Commission Rule 099.13 is granted. This dismissal is without prejudice.

FACTUAL BACKGROUND

This matter was before Administrative Law Judge JayO. Howe on December 11, 2024, for a Motion to Dismiss filed by respondent. Judge Howe's Opinion of December 17, 2024, was not appealed by either party; it is blue backed to the record of this case. In it, Judge Howe sets for the chronology of this matter to that point: Claimant filed an AR-C form on July 23, 2023, alleging a workplace injury on October 10, 2022. Respondents filed the First Report of Injury and the Form AR-2 on July 25, 2024, denying claimant was employed by respondent. A Motion to Dismiss was filed on October 11, 2024, alleging the claimant had failed to prosecute his claim. Prior to the hearing on that motion, claimant corresponded with the Court, objecting to the matter being dismissed and requesting additional time to prosecute the claim. Judge Howe denied respondents' motion.

This case was originally assigned to District 1, which includes Pulaski County, Arkansas. Subsequently, it was determined that this matter should be transferred to District 2, as it was alleged that the injury occurred in Fort Smith, Arkansas. Claimant was told when the hearing was scheduled during the prehearing conference. He also received the prehearing order containing the information regarding the date and time of the hearing by certified mail on April 24, 2025; the proof of delivery is blue backed to the record in this case.

ADJUDICATION

Rule 099.13 of the Arkansas Workers' Compensation Commission provides, in pertinent part:

“Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.”

This matter was scheduled for a full hearing in Fort Smith, Arkansas, on May 19, 2025, at 1:45 P.M. Respondent appeared with a witness, ready to defend this action. Claimant did not appear. After twenty minutes had passed, the Court called the telephone number in the file for claimant, and was told by the party answering that claimant must have forgotten that the hearing was being held that day. Respondent then made an oral motion for a dismissal of the claim pursuant to A.W.C.C. R. 099.13, which was taken under advisement. Since that time, claimant has not contacted this Court with an explanation as to why he could not attend the hearing as scheduled.

Under these facts, which includes the history of this matter before it was transferred to me, I find claimant did not have good cause to fail to appear at the merits hearing on this claim. He received reasonable notice of this hearing from the Commission. Claimant failed, without justification, to establish that this Court had jurisdiction of his claim. Having failed to prosecute his claim and having provided no explanation to the Commission that would excuse his failure to appear at his hearing, I find dismissal of the instant claim is justified under Rule 13 and hereby grant respondents' motion. While the Commission has the authority to dismiss a matter with prejudice, *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988), I will exercise my discretion and dismiss this matter without prejudice.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE