

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H303152

ROHN BUTLER, EMPLOYEE

CLAIMANT

**McDONALDS RESTAURANT/RETZER RESOURCES,
EMPLOYER**

RESPONDENT

SENTRY CASUALTY CO., CARRIER/TPA

RESPONDENT

OPINION FILED 13 SEPTEMBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 12 September 2024 in Pine Bluff, Arkansas.

The *pro se* claimant did not appear.

Worley, Wood & Parrish, PA, Ms. Melissa Wood, appeared on behalf of the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Pine Bluff, Arkansas, on 12 September 2024. This case relates to a workplace injury, sustained on or about 6 April 2023. A Form AR-C was filed on 15 May 2023. A First Report of Injury was filed on 19 May 2023, and a Form AR-2 was then filed on 22 May 2023. By way of a 3 May 2024 Order, the Full Commission granted relief to the claimant's counsel in this matter, who requested to withdraw on 9 April 2024.

On 13 June 2024, the respondents requested a dismissal for the claimant's failure to prosecute his claim. Letters were sent by the Commission to the claimant providing notice of the respondents' motion on 20 June 2024 and notice of the hearing on that motion on 1 August 2024. In keeping with the Commission's practice, those notice letters were sent via First Class Mail and Certified Mail with Return Receipts Requested. Also in keeping with the Commission's practice, returned mailings are included in a claimant's file when

correspondence comes back as undeliverable or unclaimed. I noted at the hearing that this file contains no return of the First Class Mailings, but the Certified letters came back as unclaimed. Both letters to the claimant stated that the claimant need not appear if he did not wish to object to the dismissal of this matter.

The respondents appeared at the appointed time and presented evidence and argument in support of their motion. The claimant did not appear to resist the dismissal of the matter.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 99.13 similarly provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments presented at the hearing, I find that the respondents' Motion to Dismiss should be granted and that this matter should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and this claim is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE