

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H407977

GARRISON CANALES,
EMPLOYEE

CLAIMANT

PATRIOT TIRE & OIL, LLC,
EMPLOYER

RESPONDENT

TECHNOLOGY INSURANCE COMPANY,
AMTRUST NORTH AMERICA,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 18, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in Hot Springs, Garland County, Arkansas.

The Claimant, *pro se*, failed to appear at the dismissal hearing.

Respondents represented by the Honorable Jacob Denson, Attorney at Law, North Little Rock, Arkansas.

Statement of the Case

A hearing was held on August 29, 2025, in the above-referenced matter pursuant to *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether this case should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110(d)).

Appropriate notice of this hearing was tried on all parties to their last known address, in the manner prescribed by law.

No testimony was taken.

The record consists of the transcript of August 29, 2025, hearing and the documents held therein. Commission's Exhibit 1 consists of eight (8) pages, which has been marked accordingly,

and the Respondents offered into evidence an exhibit consisting of one (1) numbered page, and it was thus marked Respondents' Exhibit 1.

Background

The procedural history of this claim is as follows:

The Claimant filed a Form AR-C with the Commission on December 10, 2024, alleging that he sustained a compensable injury on November 26, 2024, while working for the respondent-employer. Per this document, the Claimant was allegedly injured while swinging a hammer and hit himself in the shin. The claim information section of the Form AR-C shows that the Claimant requested only additional workers' compensation benefits. These benefits included a claim for additional medical expenses, and other benefits of loss of income.

The Respondents' claims adjuster filed a Form AR-2, with the Commission on December 13, 2024, accepting the claim pending further investigation. The adjuster filed an amended Form AR-2, with the Commission on March 4, 2025, controverting the claim.

Subsequently, there was no action whatsoever taken on the part of the Claimant to prosecute his claim or otherwise pursue settlement of it or even resolve it.

Therefore, on or about June 30, 2025, the Respondents filed a letter motion to dismiss for a lack of prosecution, with the Commission. The Respondents notified the Claimant of said motion by sending a copy of it via the United States Postal Service.

Subsequently, on July 1, 2025, my office sent a letter-notice informing the Claimant of the Respondents' motion to dismiss, and a deadline of twenty (20) days for filing a written response. This letter was sent via first-class and certified mail. Information received by the Commission from the United States Postal Service confirms that they were able to deliver this item to the

Claimant's home on July 3. However, the notice sent by first-class mail has not been returned to the Commission.

Per a Hearing Notice generated on July 23, 2025, my office notified the parties that this claim had been set for a hearing on the Respondents' motion to dismiss. Said dismissal hearing was scheduled for August 29, at 9:30 a.m., at the Transportation Depot, in Hot Springs, Arkansas. This hearing notice was sent via first-class mail and certified mail.

Information received from the Postal Service shows that this item was also "undeliverable" and went "unclaimed." Said notice was returned to the Commission on August 19, 2025. Yet the notice sent via first-class mail has not been returned to the Commission. Based on the foregoing, the evidence preponderates that the Claimant received notice of the dismissal hearing.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear for the hearing. However, the Respondents appeared through their attorney. Their counsel essentially argued that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. As such, the Respondents moved that this claim be dismissed for failure to prosecute under Ark. Code Ann. §11-9-702, and Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110(d)).

Adjudication

Therefore, the statutory provision and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) states:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110(d))

reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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. (Effective March 1, 1982)

A review of the evidence shows that the Claimant has had ample time to pursue his claim for workers' compensation benefits, but he has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute his claim since the filing of the Form AR-C more than six (6) months ago; nor has he resisted the motion to dismiss his claim despite having received notice of the dismissal hearing.

Here, the evidence preponderates that the Claimant has clearly failed to prosecute this claim for workers' compensation benefits. Furthermore, I am convinced that the Claimant has abandoned his claim.

Therefore, after consideration of the evidence before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13(now codified at 11 C.A.R. § 25-110(d)), this claim for workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refile of it within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed a Form AR-C in December 2024. Since this time, the Claimant has not requested a hearing or demonstrated that he wishes to pursue this claim for workers' compensation benefits.
3. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
4. Appropriate notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The evidence preponderates that the Respondents' motion to dismiss this claim for lack of prosecution is well founded, and should be hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13(now codified at 11 C.A.R. § 25-110(d)), to the refiling of it within the limitation period specified by law.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is made pursuant to the provisions of Ark. Code Ann. §11- 9-702, and Commission Rule 099.13(now codified at 11 C.A.R. § 25-110(d)), *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge

