

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H208114**

**RICHARD CLARK,
EMPLOYEE**

CLAIMANT

**NESTLE US HOLDCO, INC.,
SELF-INSURED/EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA,
CARRIER**

RESPONDENT

**ESIS, INC.,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JULY 24, 2024

Hearing conducted on Wednesday, June 28, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Mr. Richard Clark, represented himself *pro se*, Jonesboro, Arkansas, and did appear in person at the full hearing.

The Respondents were represented by the Honorable Michael Stiles, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission originally for a full hearing on June 28, 2024. However, since Claimant would not prosecute his claim but instead left the courtroom without permission, Respondents made an oral Motion to Dismiss due to a lack of prosecution. A hearing was conducted on this Motion on June 28, 2024, in Jonesboro, Arkansas. No testimony was taken in the case. Admitted into evidence was Respondents' Exhibit 1, medical records consisting of 120 pages, Respondents' Exhibit 2, Claimant's criminal history, attendance records, wage records and other employment records consisting of 73 pages, Respondents' Exhibit 3, consisting of a video depicting Claimant at work. Respondents' Exhibit 4, Respondents' response to questionnaire consisting of five pages, and Respondents' Exhibit 5,

correspondence and confirmation of discovery, consisting of six pages. I have also blue-backed Forms AR-1, AR-2, September 6, 2023, Prehearing Order, Motion to Compel Order filed June 18, 2024, Melanie Miller email dated June 28, 2024, Catherine Ferguson email dated June 28, 2024, Melanie Miller email dated December 13, 2023, Melanie Miller email dated April 1, 2024, and Melanie Miller email dated September 7, 2023, *as discussed infra*.

STIPULATIONS

By agreement of the parties, the full hearing stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee/carrier relationship existed on November 5, 2022, when Claimant allegedly sustained a compensable injury to his low back.
3. Respondents have denied and controverted this claim in its entirety and no benefits have been paid.
4. The parties will stipulate to Claimant average weekly wage and compensation rates on or before the hearing date.¹

ISSUE

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained compensable injuries to his low back on November 5, 2022, by specific incident.

¹ This issue, as well as all other issues, to be adjudicated for the full hearing were not addressed since Claimant left the proceedings without permission.

2. Whether Claimant is entitled to any reasonable and necessary medical treatment and related expenses, including mileage and out of pocket expenses.
3. Whether Claimant is entitled to temporary total disability benefits from November 6, 2022, to a date yet to be determined.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant contends that he is entitled to compensation for his low back injury, reasonable and necessary medical treatment and related expenses, and temporary total disability benefits.

Respondents' Contentions: Respondents contend the following:

1. The Respondents contend the Claimant, who was hired on January 31, 2022, did not sustain a compensable injury to his low back on November 5, 2022, as defined by Arkansas law. Accordingly, the Claimant is not entitled to any benefits whatsoever.
2. The Respondents have denied and controverted this claim in its entirety; thus, the Respondents have not paid any benefits to or on behalf of the Claimant because of his purported low back injury.
3. The Claimant's supposed injury did not occur out of and during the course and scope of the Claimant's employment for the Respondent/Employer.
4. The Respondents respectfully contend that the Claimant was not involved in any specific-incident type injury on or about November 5, 2022.
5. The Claimant is not entitled to any benefits herein, as the Claimant's need for medical treatment, if any, is unrelated to the supposed injury the Claimant allegedly sustained

on November 5, 2022. Instead, the Claimant's current ailments and need for medical treatment, if any, is related to an unrelated and/or pre-existing condition.

6. In the alternative, if it is determined the Claimant sustained a compensable injury, then the Respondents hereby request a setoff for all benefits paid by the Claimant's group health carrier, all short-term disability benefits received by the Claimant, and all unemployment benefits received by the Claimant.
7. The Respondents reserve the right to amend and supplement their contentions and position after additional discovery has been completed.

STATEMENT OF FACTS

The Claimant allegedly injured his low back while working for Respondent/Employer on November 5, 2022. The Claimant allegedly was working at his station when he slipped on some water on the floor but did not physically fall onto the floor. See Form AR-1, blue-backed. The slip itself is the alleged catalyst for the claimed back injury.

A prehearing telephone conference took place on September 6, 2023. There the Claimant wanted to argue the merits of his claim. He was advised that this was not the time to argue the merits of his claim. Claimant got extremely loud and aggressive stating that he may lose his legs or become homeless before his case was heard. Claimant was further advised that this is the process to get to the merits of his claim and he can hire an attorney or contact the legal advisors to help with this process. Despite my advice, the Claimant continued to argue the merits of his claim. He was again admonished that this was not the time to go into the merits of his claim. The Claimant immediately hung up after being admonished. However, the prehearing phone conference was not over. I called the Claimant back and advised that he should compose himself properly and that acting out will not be tolerated. Claimant was then given December 22, 2023,

as his full hearing date and was told that he needs to comply with discovery since Respondents' counsel made that an issue during the phone conference. A Prehearing Order was filed that same day as the phone conference.

On December 13, 2023, Respondents' counsel requested a continuance due to Claimant's failure to comply with discovery. A phone conference was held with the parties and Claimant admitted to not complying with discovery. As a result, I continued the hearing and returned the file to general files. See Melanie Miller email dated December 13, 2023, blue-backed.

On April 1, 2024, a second hearing was set for June 28, 2024, Jonesboro, Arkansas, twelve noon. See Melanie Miller email dated April 1, 2024, blue-backed. Proper notice was sent out to the Claimant at his last known address of record.

On June 28, 2024, the day of the full hearing, the Claimant spoke with Catherine Ferguson, my former legal assistant, who still works for the Commission, at 8:16 am, asking what time the hearing was set for and the address where it will be held. Ms. Ferguson answered his question. Claimant subsequently spoke with Melanie Miller, my assistant, later that morning at 9:44 am. Claimant informed my assistant that he woke up and did not know where his papers were and where the hearing was going to be held but he called around and got the answer. See Melanie Miller email dated June 28, 2024, blue-backed.

Claimant walked into the courtroom at 12:10 pm, the proceedings were to begin at 12:00 pm. The Claimant entered the courtroom with a back brace and a woman dressed in scrubs assisting him. The Claimant walked slowly, in a clearly overly exaggerated and dramatic way, to counsel's table and made an oral Motion for Continuance. The substance of his Motion was that he was not feeling well, and that discovery was not complete. Claimant's discovery issue was based on his belief that Respondents sent him forty-nine pages of falsified documents. See

Transcript, pages 3, lines 22-25, through page 4, lines 1-8. This issue has been fully addressed and ruled on. See Motion to Compel Order filed June 18, 2024, blue-backed. As to the Claimant not feeling well, he states he hasn't felt well in a couple of days. However, he states this morning, the day of his hearing, his pain was bad, and he had taken some medication.

The Respondents objected to the Motion. I agreed with Respondents' objection and denied the Motion. I did not believe the Claimant was actually hurt, rather he was not prepared and needed an excuse for a continuance. Therefore, I advised the Claimant that we are all present and ready to go forward with this claim. The Claimant started to leave the courtroom. I warned the Claimant if he left the courtroom that I would entertain an oral Motion to Dismiss from Respondents. The Claimant continued to walk towards the door, so I gave him the same warning a second time. Despite these two warnings the Claimant left the courtroom. The Respondents made their oral Motion to Dismiss due to a lack of prosecution.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the June 28, 2024, hearing.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' oral Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

I find by preponderance of the evidence that the Claimant was exaggerating his health issues and used it as a pretext in hopes of gaining a continuance. The Claimant alleges he was hurting for days prior to the hearing but did not make the Commission aware of it. Instead, he states, that the “morning” of the hearing his pain was particularly bad, and he had to take medication to help with that pain. I don’t credit Claimant’s statement. The Claimant had ample opportunities to contact the Commission and Respondents’ counsel making us aware of his condition. The Claimant spoke with Catherine Ferguson, an employee of the Commission, at 8:16 am, the day of the hearing, to get the time and place for the hearing. The Claimant, during the same morning, later spoke with Melanie Miller, my assistant, at 9:44 am, almost an hour and a half later after speaking with Ms. Ferguson, stating that he woke up not knowing where his papers were and did not know where the hearing would take place. Claimant never stated to Ms. Ferguson or Ms. Miller that he was not feeling well, had to take medication for pain, or wanted a continuance.

The Claimant also argues that there were discovery issues. The Claimant alleges that the discovery sent to him by Respondents’ counsel was fraudulent. Claimant was made aware, via June 11, 2024, phone conference, and in an Order filed June 18, 2024, and blue-backed to this record, that he can present any contradictory evidence at the full hearing, and it will be reviewed. Thus, the discovery issue as a bases for the continuance is without merit.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant appeared at the hearing with one thin manilla envelope. Based on the amount of discovery produced in this claim, it was clear that he was not prepared to go forward with the full hearing. It was also clear, based on my

observations of Claimant, that his claim of not feeling well was not genuine², rather a mere pretext to disguise the fact that he was not prepared to go forward with the claim. This was the second full hearing scheduled for the Claimant. The first was continued due to the Claimant not complying with discovery, although he had more than two months to comply. Again, I had denied Claimant's oral Motion for Continuance during the hearing. The Claimant decidedly left the courtroom after my ruling despite being given two warnings. The Claimant was not dismissed from the hearing and his exit from the courtroom proceedings was an abandonment of his claim. Therefore, I do find by the preponderance of the evidence that Respondents' oral Motion to Dismiss should be granted.

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). However, in numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice. *See Professional Adjustment Bureau v. Strong*, 275 Ark. 249, 629 S.W.2d 284 (1982). Based on the above authorities, I find that the dismissal of this claim should be and hereby is entered without prejudice.

REMAINING ISSUES

Because of the above findings and conclusions, the remaining issues—whether Claimant sustained a compensable injury to his low back on November 5, 2022; whether Claimant is entitled to reasonable and necessary medical treatment and related expenses, including mileage

² It must be noted, that after the hearing, the bailiff, Deputy Mark Ballard, who retrieved the Claimant from a courtroom in a different court building, voluntarily stated to me that he saw the Claimant walking "normally" from one building to the next before the proceedings began. He further stated that the Claimant changed how he was walking when entering the annex building. Claimant then started shaking when he made it to the Worker's Compensation courtroom.

and out of pocket expenses; whether Claimant is entitled to temporary total disability—are moot and will not be addressed.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' oral Motion to Dismiss is granted, *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge