

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H307855**

**GEOFFREY ERWIN,
EMPLOYEE**

CLAIMANT

**AMAZON.COM SERVICES, LLC,
EMPLOYER**

RESPONDENT

**ZURICH AMERICAN INS. CO./
SEDGWICK CLAIMS MG'T SERVICES, INC.
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION TO DISMISS WITHOUT PREJUDICE
FILED AUGUST 16, 2024**

Hearing conducted on Wednesday, August 14, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Geoffrey Erwin, pro se, of Pine Bluff, Jefferson County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Rick Behring, Jr., Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, August 14, 2024, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement) and Commission Rule 099.13 (2024 Lexis Replacement).

The respondents filed a motion to dismiss without prejudice and incorporated brief in support thereof (MTD) with the Commission on June 18, 2024, requesting this claim be dismissed without prejudice for lack of prosecution. Consistent with the applicable Arkansas law, by letter dated June 20, 2024, the Commission mailed a copy of both the respondents' MTD, and the subject hearing notice via the United States Postal Service (USPS), Certified Mail, Return Receipt

Requested, to the claimant's last known address of record with the Commission which the claimant received on June 22, 2024. (See blue-backed Commission Exhibit 1; Respondents' Exhibit 1 at 6-12). Thereafter, the claimant failed and/or refused to respond in any way to either the Commission or to the respondents; and he failed and/or refused to appear at the subject hearing. The claimant never objected in any way to the respondents' MTD.

It should be noted the claimant was represented by counsel at the time this claim was filed on his behalf; however, by an order filed May 23, 2024, the Full Commission granted the claimant's attorney's motion to withdraw as counsel. (RX1 at 4-5).

I hereby incorporate the facts stated in the respondents' MTD filed June 18, 2024, as though they were set forth word-for-word herein. (RX1 at 6-10; 12). The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' MTD. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has both failed and/or refused to prosecute this claim, and he has failed and/or refused to request a hearing within the last six (6) months on his claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After the Commission mailed due and legal notice of the respondents' MTD filed June 18, 2024, to the claimant's last known address of record with the Commission, the claimant failed and/or refused to respond to the motion in any way; failed and/or refused to object to the subject MTD; and failed and/or refused to request a hearing on his subject claim.
3. The claimant failed and/or refused to appear at the subject hearing and, therefore, has waived his right to a hearing on the respondents' subject MTD.
4. The claimant has failed to request a hearing on this claim within the last six (6) months.
5. The respondents' MTD without prejudice filed with the Commission on June 18, 2024, should be and hereby is GRANTED.
6. Therefore, this claim hereby is dismissed without prejudice subject to the applicable deadline(s) prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion shall not be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf from refileing this claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp