

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H306183**

KENYARDIS D. FOREMAN, EMPLOYEE	CLAIMANT
AMAZON.COM SERVICES, LLC, EMPLOYER	RESPONDENT
AMERICAN ZURICH INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED JUNE 27, 2024**

A hearing was held before Administrative Law Judge Chandra L. Black, in Pulaski County, Little Rock, Arkansas.

The Claimant, pro se, did not appear at the hearing.

Respondents represented by the Honorable David C. Jones, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on June 12, 2024 , in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702(d), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had 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 the June 12, 2024, hearing and the documents held therein. Explicitly, Commission's Exhibit 1 includes six (6) total pages of correspondence and

returned mail from the United States Postal Service; and Respondents' Exhibit 1 consisting of forty-one (41) numbered pages of pleadings, correspondence, unexecuted authorizations, discovery requests, and various other forms related to this claim.

### **Procedural History**

On September 22, 2023, the Claimant's former attorney filed with the Commission a claim for Arkansas workers' compensation benefits on behalf of the Claimant via a Form AR-C. Per this document, the Claimant alleged that he sustained an injury to his back during the course and in the scope of his employment with the respondent-employer, November 7, 2022.

The respondent-insurance-carrier filed a Form AR-2, with the Commission on September 29, 2023, wherein they accepted compensability of the claim. However, the Respondents accepted this claim for a compensable "medical only" back injury.

On October 6, 2023, the Respondents' attorney wrote a letter to the Commission saying that they had accepted the claim for a compensable back injury and paid all appropriate benefits. Counsel for the Respondents also said that the Claimant sustained a compensable back injury to his back on October 5, 2022, instead of November 7 as shown on the Form AR-C, filed by his former attorney.

The Claimant's attorney obtained a Change of Physician Order from the Commission on October 17, 2023, for the Claimant to start treating Dr. Ali Raja.

Since the filing of the Form AR-C on September 22, 2023, there has been no action on the part of the Claimant to prosecute this claim by way of a bona fide request for a hearing.

On November 30, 2023, the Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant in this matter. There being no objection to the motion

for the Claimant's attorney to withdraw as counsel of record, the Full Commission entered an Order on December 19, 2023, granting the motion.

Still, there was no action on the part of the Claimant to prosecute this claim by way of a bona fide request for a hearing or in any other manner.

Conversely, the Claimant did not attend his appointment with Dr. Ali Raja. Therefore, on March 1, 2024, the Commission entered an Order to Set Aside the Change of Physician.

No request for a hearing was requested by the Claimant.

Therefore, on or about April 4, 2024, the Respondents filed a Respondents' Motion to Dismiss Without Prejudice, which was accompanied by a Respondents' Brief in Support of Respondents' Motion to Dismiss Without Prejudice, with the Commission, along with a Certificate of Service to the Claimant.

The Commission sent a letter to the Claimant on April 9, 2024, informing Claimant of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter was mailed to the Claimant by both first-class and certified mail. Tracking information received by the Commission from the Postal Service shows that they were unable to deliver this parcel of mail to the Claimant. The letter sent by first-class mail has not been returned to the Commission.

As of late, there has not been any type of reply from the Claimant.

Pursuant to a Hearing Notice dated May 1, 2024, the Commission notified the parties that the matter had been set for a hearing on the Respondents' motion to dismiss. Said hearing was scheduled for June 12, 2024, at the Arkansas Workers' Compensation Commission located in Little Rock, Arkansas.

Said letter was mailed to the Claimant by both first-class and certified mail. Information received from the Postal Service shows that they were unable to deliver the letter to the Claimant. The letter sent by first-class mail has not been returned to the Commission.

The hearing was held as scheduled. The Claimant did not appear at the hearing. The Respondents' counsel argued that the Claimant has failed to prosecute his claim for workers' compensation benefits. He further noted that the Claimant has not taken any affirmative action to prosecute his claim in over six (6) months. More specifically, counsel noted that the Claimant has not taken any action to advance his claim since the filing of the Form AR-C, which was done almost nine (9) months ago. Therefore, the Respondents' attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13, with or without prejudice.

### **Adjudication**

The statutory provisions 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(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 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 additional 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 for workers' compensation benefits since the filing of the Form AR-C, over nine (9) year ago; and nor has he resisted the motion for dismissal or even responded to the notices of this Commission. Hence, the evidence preponderates that the Claimant has failed to prosecute this claim for additional workers' compensation benefits. Moreover, considering that the Claimant did not respond to the notices of this Commission and did not appear at the dismissal proceedings, I am convinced that the Claimant has abandoned this 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 (d), and Commission Rule 099.13, this claim for additional workers' compensation benefits should be dismissed *without prejudice* to the refiling within the limitation period specified under the Arkansas Workers' Compensation Act (the "Act").

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of 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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since his former attorney filed the Form AR-C, which was done more than nine (9) months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute his claim for workers' compensation benefits based upon the relevant provisions of the specified statute, Ark. Code Ann. 11-9-702, and Rule 099.13 of this Commission.
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 Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for additional workers' compensation benefits. This dismissal is pursuant to Ark. Code Ann. §11-9-702(d), and Commission Rule 099.13, *without prejudice* to the refiling of this claim within the limitation period specified under the Act.

**IT IS SO ORDERED.**

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**Chandra L. Black**  
**Administrative Law Judge**