

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H204703**

**CLIFTON FORBES,
EMPLOYEE**

CLAIMANT

**TRINITY RAIL MAINTENANCE SVCS,
EMPLOYER**

RESPONDENT

**ACE AMERICAN INS. CO.,
CARRIER**

RESPONDENT

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

RESPONDENT

OPINION FILED MAY 7, 2024

Hearing conducted on Friday, April 12, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Mr. Clifton Forbes, pro se, of Jonesboro, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Jason Ryburn; however, the Motion to Dismiss was argued by the Honorable Michael Ryburn, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on April 12, 2024, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Admitted into evidence was Commission Exhibit 1, pleadings, correspondence, and Certified U.S. Mail return receipts, consisting of nine pages. I have also blue-backed Forms AR-2 and AR-C, *as discussed infra*.

The record reflects on June 30, 2022, a Form AR-C was filed in this case, reflecting that Claimant purportedly sustained injuries to his cervical spine, thoracic spine, and lumbar spine on

April 21, 2022. The record does not state how the alleged injury occurred when reviewing Forms AR-2 and AR-C; no Form AR-1 was filed in this claim. The Form AR-C was filed by Claimant's then-lawyer, Neal Hart, who entered his appearance on June 30, 2022. The Respondents were represented by Attorney Jason Ryburn. The Respondents initially accepted the claim and confirmed that acceptance in a letter to the Commission dated June 30, 2022. The Claimant filed for a Change of Physician with the Commission on July 5, 2022. The Claimant was being treated by Dr. John Brophy and requested to be treated by Dr. Dominic Maggio. The Respondents, in another letter to the Commission dated July 8, 2022, changed their position on compensability and now denies the claim in its entirety. Respondents filed a Form AR-2 on August 2, 2022, representing that the claim had no objective findings. As a result, Claimant was informed by the Commission, in a letter dated August 5, 2022, that the request for a change of physician could not proceed since the Respondents were controverting the claim in its entirety.

Attorney Hart filed a Motion to Withdraw as Counsel from the claim on September 25, 2023. The Commission granted the motion on October 16, 2023. Respondents then filed a Motion to Dismiss on December 6, 2023. Claimant was sent notice of the Motion to Dismiss from the Commission on December 8, 2023, to Claimant's last known address. He did not respond to the motion, so a hearing was set. In accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of both the Respondents' Motion to Dismiss and the hearing notice at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was signed by the Claimant on March 6, 2024, at the address of record and the regular First-Class mail notice was not returned. The hearing took place on April 12, 2024. As previously stated, the Claimant did not show up to the hearing.

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:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the April 12, 2024, hearing.
3. The Claimant has failed to prosecute this claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.

DISCUSSION

Consistent with both *Ark. Code Ann.* § 11-9-702(a)(4) and AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Commission Exhibit 1 provides multiple signed Certified U.S. Mail Return Receipts. One receipt dated January 27, 2024, signed by Janelle Forbes, Claimant's wife, establishes notice of the Motion to Dismiss. The other Certified U.S. Mail Return Receipt was dated March 6, 2024, and was signed by the Claimant himself and establishes notice of the Motion to Dismiss hearing date, at which the Claimant did not appear.

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 has not filed a request for a hearing since the filing of his June 30, 2022, Form AR-C. Even when he received Respondents' Motion to Dismiss on January 27, 2024, he failed to take that opportunity to object and request a hearing. Therefore, I find by the preponderance of the evidence that the Claimant has violated AWCC Rule 099.13 in failing to prosecute his claim. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

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

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge