

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H306859

JUAN HERNANDEZ, EMPLOYEE

CLAIMANT

HUGO PRECISION HEAT & AIR, LLC, EMPLOYER

RESPONDENT

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

RESPONDENT

OPINION FILED 26 SEPTEMBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 25 September 2024 in Little Rock, Arkansas.

The *pro se* claimant did not appear.

The Frye Law Firm, William C. Frye, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 25 September 2024. This case relates to an alleged workplace injury sustained on or about 25 September 2023. A Form AR-C then filed by the claimant on 20 October 2023, claiming injuries to his right upper extremity. A First Report of Injury was filed by the respondents on 6 November 2023; and a Form AR-2 accepting the claim was filed on or about the same day. On 7 November 2023, the Commission received a letter from the respondents' counsel indicating that benefits were being paid on the claim.

On 31 July 2024, the respondents requested a dismissal of this matter under AWCC Rule 099.13 for lack of prosecution. Letters providing notice of that motion and notice of the hearing were sent to the claimant, consistent with the Commission's practice. I noted at the hearing that mailings from the Commission to claimants are sent via both First Class and Certified Mail with return receipts requested. Returned mail is regularly appended to the

Commission's file. The Commission's file includes the return of the unclaimed Certified Mailings, but no return of the First-Class mailings.

The respondents appeared on 25 September 2024, presented their motion, and offered supporting evidence into the record. See Exhibit No. 1. As argued by the respondents at the hearing, the file reflects no request for a hearing on a claim in the relevant time preceding the filing of their motion. And the claimant did not appear at the hearing to resist the dismissal of this claim. According to counsel, the claimant has returned to work without any apparent issue and seems to have abandoned his pursuit of this claim. Counsel also noted that with a dismissal without prejudice, the claimant retains the option to refile his claim through the expiration of the applicable limitations period.

Our Rule 99.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents' counsel, I find that the respondents' Motion to Dismiss should be granted and that the matter should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE