

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H304971**

**WAYLON D. JOHNSON,  
EMPLOYEE**

**CLAIMANT**

**HALE TRAILER BRAKE & WHEEL, INC.,  
EMPLOYER**

**RESPONDENT**

**ZURICH AMERICAN INS. CO./  
GALLAGHER BASSETT SERVICES, INC.  
CARRIER/TPA**

**RESPONDENT**

**ORDER TO DISMISS WITHOUT PREJUDICE  
FILED AUGUST 22, 2024**

Hearing conducted on Wednesday, August 20, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Waylon D. Johnson, pro se, of North Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable David C. Jones, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Wednesday, August 20, 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).

On June 18, 2024, the respondents filed with the Commission a motion to dismiss this claim without prejudice and brief in support of their motion (MTD) based on the aforementioned statute and Commission rule. (Respondents' Exhibits 1 and 2). Pursuant to the applicable law the claimant was provided due and legal notice of both the respondents' MTD, as well as notice of the subject

hearing to his last known of address on record with the Commission via the United States Postal Service (USPS), Certified Mail, Return Receipt Requested, which the claimant received on June 22, 2024. (Commission Exhibit 1). Thereafter, the claimant failed and/or refused to respond to the subject MTD, and he failed and/or refused to appear at the subject hearing.

It should be noted the claimant previously had been represented by attorney Mark Alan Peoples; however, by Full Commission order filed February 8, 2024, the Full Commission unanimously granted Attorney Peoples's motion to withdraw as the claimant's attorney. (RX1 at 2).

I hereby incorporate by reference the facts contained in the respondents' MTD as set forth word-for-word herein. (RX1 & 2).

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 reveals the claimant has to date failed and/or refused to prosecute his claim at this time.

Therefore, after a thorough consideration of the applicable law as applied to the facts of this claim, the issues, and other relevant matters of record, as well as the representations of credible counsel 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 refiled 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.**

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Mike Pickens  
Administrative Law Judge

MP/mp

MP/mp