

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H308051**

**LEE ROBERT JONES,
EMPLOYEE**

CLAIMANT

**PHILLIP SCOTT EVERETT,
EMPLOYER**

RESPONDENT

**STONETRUST COMMERCIAL INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 6, 2024

Hearing conducted on Thursday, August 2, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Forrest City, St. Francis County, Arkansas.

The Claimant represented himself, *Pro Se*, McCrory, Arkansas.

The Respondents were represented by the Honorable Zackery F. Ryburn, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on August 2, 2024, in Forrest City, Arkansas. No testimony was taken in the case. Claimant, according to the Commission's file, is *Pro Se*. Admitted into evidence was Respondent Exhibit 1, Form AR-C, and Order dismissing Bryce Brewer as attorney of record, consisting of 2 pages. I have blue-backed Form AR-1, Form AR-2, a copy of Claimant's letter to Commission received July 22, 2024, and an email from Melanie Miller dated July 31, 2024, *as discussed infra*.

The record reflects on December 13, 2023, a Form AR-C was filed by then-attorney, Bryce Brewer, purporting that Claimant sustained injuries to his right shoulder, right arm, left arm, and chest when he was involved in a moving vehicle accident on September 3, 2022. On December 21, 2023, a Form AR-1 was filed stating the Respondent/Employer was made aware of Claimant's

injuries the same day it occurred, September 3, 2022. The form further states the Claimant worked as a laborer for Respondent/Employer. On December 28, 2023, Respondents files a Form AR-2 that formally controverted the claim. Respondents' counsel, Zachary Ryburn, entered his appearance on December 28, 2023. Respondents' counsel, Jason Ryburn, entered his appearance on January 30, 2024. Claimant's counsel, Bryce Brewer, filed a Motion to Withdraw as Counsel on May 7, 2024. The motion was granted on June 4, 2024. The Respondents next filed a Motion to Dismiss on June 13, 2024. The motion alleges, in short, a failure to prosecute by the Claimant. Claimant was sent notice of the Motion to Dismiss certified and regular First-Class Mail on June 24, 2024. The Claimant responded to the motion in writing on July 22, 2024. The Claimant did not object to the dismissal and wanted the Commission to close his case.

Despite receiving Claimant's letter agreeing to the dismissal, the Claimant was mailed due and proper legal notice of the hearing date via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail on July 29, 2024, to his address of record. The certified notice was not claimed by Claimant. However, the regular First-Class mail hearing notice was not returned to the Commission. The Claimant was also emailed the hearing notice on July 29, 2024. A phone call was made to Claimant by my assistant on July 31, 2024, confirming that he received notice of the hearing. The Claimant confirmed that the hearing date is August 2, 2024, at 10:30 am, in Forrest City, Arkansas. The hearing did take place on August 2, 2024, and the Claimant was not present.

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 of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the August 2, 2024, hearing.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Claimant did not claim the certified hearing notice sent to his address of record. However, the hearing notice sent U.S. First-Class mail, to his address of record, was not returned to the Commission. The Claimant is responsible for keeping the Commission updated on his current address. Thus, I find by the preponderance of the evidence that Claimant received reasonable notice of the Motion to Dismiss hearing.

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 filed his Form AR-C on December 13, 2023. Since then, no bona fide request for a hearing has occurred. Therefore, I do find that the Respondents have proven by the preponderance of the evidence that Claimant has failed 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, *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge