

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H308145

RAYMOND K. KAGEBEIN, EMPLOYEE

CLAIMANT

BIGHAM BROTHERS, INC., EMPLOYER

RESPONDENT

SENTRY CASUALTY CO., CARRIER/TPA

RESPONDENT

OPINION FILED 12 September 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 4 September 2024 in Little Rock, Arkansas.

The pro se claimant did not appear.

Mr. Jarrod Parrish, Worley, Wood & Parrish, appeared on behalf of the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 4 September 2024. This case relates to an alleged workplace injury, sustained on or about 8 December 2023. The claimant filed a Form AR-C on 18 December 2023 alleging a wrist injury. A First Report of Injury was filed on 5 January 2024, and a Form AR-2 was filed that same day. By way of an Order dated 25 June 2024, the Full Commission granted a motion for withdrawal filed by Claimant's counsel on 14 May 2024. See Respondent's Exhibit No 1.

On 2 July 2024, the respondents requested a dismissal of this matter for failure to prosecute the claim. A letter from the Commission to the claimant communicating that motion's filing was dated 9 July 2024, and another letter setting a hearing on the motion was dated 1 August 2024. Those letters provide notice that the claimant was not required to appear if he did not object to the dismissal of the claim. Copies of those letters are included

in Respondent's Exhibit № 1, and the Commission's file is absent any response from the claimant. 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. This claim file includes only a return of the Certified Mailings, indicating that the letters were unclaimed or undeliverable to the addressee. The First Class letters were not returned as undeliverable.

The respondents appeared on 4 September 2024, presented their motion, and offered supporting evidence into the record. 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 to resist the dismissal of this claim.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. 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