

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE № H106381**

**DERWIN LEE, EMPLOYEE**

**CLAIMANT**

**DEPT. OF CORRECTION, SELF-INSURED EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
THIRD PARTY ADMINISTRATOR**

**RESPONDENT**

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**OPINION FILED 25 JULY 2024**

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

The *pro se* claimant did not appear.

Mr. Charles McLemore appeared for the respondents.

**STATEMENT OF THE CASE**

A hearing on the respondents' Motion to Dismiss was held on this matter in McGehee, Arkansas, on 25 July 2024. This case relates to an alleged workplace injury sustained on or about 31 July 2021. The Commission's file reflects filings through the life of this claim, including a Prehearing Order dated 3 March 2022. Subsequent to the entry of that Order, the claimant filed a letter response, file-marked on 9 March 2022, indicating that he "would not like to pursue" his claim. The matter was then returned to the Commission's General Files.

On 5 June 2024, the respondents requested a dismissal of this matter for want of prosecution. See Exhibit № 1. Letters providing notice of that motion and notice of the hearing were sent to the claimant, consistent with the Commission's practice. As I noted at the hearing, the claimant contacted the Commission after receiving notice of the motion

and hearing, and, as indicated in an email appended to the Commission's file, indicated that he "thought his claim was already closed" and that he did not object to the dismissal.

The respondents appeared on 25 July 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 at the hearing to resist the dismissal of this claim. Indeed, he earlier voiced his agreement with the claim's dismissal.

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.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE