

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE № H202978/H205938

CAMERON McCASKILL, EMPLOYEE

CLAIMANT

DEPARTMENT OF CORRECTION, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, TPA

RESPONDENT

OPINION FILED 14 JUNE 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 13 June 2024 in Pine Bluff, 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 Pine Bluff, Arkansas, on 13 June 2024. This case relates to alleged workplace injuries, sustained on or about 30 March 2022 (H202978) and 28 July 2022 (H205938). Forms for a First Report of Injury were filed on 18 April 2022 and 18 August 2022, respectively. A Form AR-2 was filed for each claim on the same day as the First Report of Injury. On 1 June 2022, between the dates of the first alleged injury and the second, the claimant requested via email to the Commission a hearing on the first claim. See Exhibit № 1. After the claimant failed to provide to the Commission material responsive to a preliminary questionnaire, the matter was returned to the Commission's general files. A letter to that effect was addressed to the claimant and dated 21 November 2022.

On 2 April 2024, the respondents moved for both matters to be dismissed without prejudice for the claimant's failure to prosecute either claim. A letter from the Commission

to the claimant communicating that motion was dated 9 April 2024 and another letter setting a hearing on the motion was dated 1 May 2024. The Commission's file is absent any responsive correspondence 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 April 9th and May 1st Certified Letters that indicate that they were returned as "unclaimed."

The respondents appeared on 13 June 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.

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 these claims should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and these claims are DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE