

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE N^o H401408

MICHAEL E. MURRAY, EMPLOYEE

CLAIMANT

METRO TOWING & RECOVERY, EMPLOYER

RESPONDENT

**NORGUARD INSURANCE COMPANY/
GUARD INSURANCE COMPANIES, CARRIER/TPA**

RESPONDENT

OPINION FILED 2 OCTOBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 2 October 2024 in Little Rock, Arkansas.

The *pro se* claimant did not appear.

Barber Law Firm, Ms. Karen McKinney, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 2 October 2024. This case relates to an alleged workplace injury, sustained on or about 23 December 2023. The claimant filed a Form AR-C on 26 February 2024, stating a back injury after bending over on the job. A First Report of Injury was filed on 29 February 2024, and a Form AR-2 denying the claim was filed on 12 March 2024. See Respondents' Exhibit N^o 1.

The respondents attempted to move forward with discovery, but found the claimant to not be responsive to those requests. *Id.* On 2 August 2024, the respondents requested a dismissal of this matter for the claimant's failure to prosecute the claim. Letters providing notice of that motion and notice of the hearing were sent to the claimant, consistent with the Commission's practice. See Respondents' Exhibit No. 2. 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. The Commission's file includes only the return of one Certified Mailing, which notes it as unclaimed. In reviewing the file before the hearing, I found a report from the Legal Advisors Division that recapitulated a phone discussion with the claimant on 17 September 2024. See Commission's Exhibit No. 1. That report indicates that the claimant is presently working at a new job and does not wish to pursue his claim at this time. The possibility of the claimant refiling a Form AR-C and requesting a hearing is also noted in the report.

The respondents appeared on 2 October 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, consistent with the note entered into the file by the Legal Advisors Division, 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 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