

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H306149**

**GARRETT MOORE,  
EMPLOYEE**

**CLAIMANT**

**HINO MOTOR MFG USA INC,  
EMPLOYER**

**RESPONDENT**

**FIRST LIBERTY INSURANCE CORP.,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 28, 2024**

Hearing conducted on Wednesday, May 3, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Forrest City, St. Francis County, Arkansas.

The Claimant, Mr. Garrett R. Moore, pro se, of Paragould, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Jason M. Ryburn, Little Rock, Arkansas.

**BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on May 3, 2024, in Forrest City, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as a laborer. The Claimant injured his leg and knee on July 16, 2023. He reported this injury to his Respondent/Employer on September 22, 2023. Admitted into evidence was Respondent Exhibit 1, Form AR-C and Respondents' Motion to Dismiss, totaling two pages. Commission Exhibit 1, correspondence, and Certified U.S. Mail return receipts, consisting of six pages. I have also blue-backed Form AR-1 and Form AR-2, *as discussed infra*.

The record reflects on September 21, 2023, a Form AR-C was filed with the Commission through Claimant's then-attorney, Mark Peoples. On September 28, 2023, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to his leg and knee on July 16, 2023. The record does not reflect which leg and knee was injured nor does it reflect how the injury occurred. Respondents on September 29, 2023, filed a Form AR-2, representing that there was no evidence to support a work-related injury. Attorney Jason Ryburn entered his appearance on behalf of the Respondents on November 7, 2023.

On February 5, 2024, Attorney Peoples, filed a Motion to Withdraw as Counsel. There Peoples alleges the Claimant has failed or refused to communicate with him for several weeks, despite his numerous and repeated attempts. The Motion was granted on February 26, 2024.

The Respondents next filed a Motion to Dismiss on March 1, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent a certified notice of the Motion to Dismiss to his last known address of record on March 6, 2024. The certified notice was unclaimed. However, the same notice was also sent regular First-Class mail on the same day and was not returned to the Commission. Nevertheless, the Claimant did not respond to the notice in writing. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of both the Respondents' Motion to Dismiss and the hearing notice at his current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was claimed by Claimant on April 1, 2024. The hearing took place on May 3, 2024. As mentioned before, the Claimant did not show up to the hearing.

**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 May 3, 2024, hearing.
3. Respondents have proven by the 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. Commission Exhibit 1 provides multiple Certified U.S. Mail Return Receipts. One receipt dated April 1, 2024, was served on the Claimant. Despite receiving this notice, the Claimant did not show up to the hearing. The Claimant was initially made aware of the Motion to Dismiss when it was sent to him March 6, 2024, via certified and regular First-Class mail. He did not claim the certified letter. However, the notice sent regular First-Class U.S. Mail was not returned to the Commission. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

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 September 21, 2023, and since then has taken no action in furtherance of this claim. When notice of the Motion to Dismiss hearing was received by him on April 1, 2024, he failed to appear or send

any correspondence objecting to the motion or requesting a hearing. In this regard, the Claimant has failed to do the bare minimum in prosecuting his claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim. And as a result, 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 and this claim is hereby dismissed without prejudice.

**IT IS SO ORDERED.**

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Steven Porch  
Administrative Law Judge