

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE № F904100**

JOHN NEELY, EMPLOYEE

CLAIMANT

EVERGREEN PACKAGING, LLC, EMPLOYER

RESPONDENT

**ACE AMERICAN INSURANCE CO./ESIS, INC.,
CARRIER/TPA**

RESPONDENT

OPINION FILED 4 APRIL 2025

Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 13 March 2025 in Pine Bluff, Arkansas.

The *pro se* claimant failed to appear.

The Frye Law Firm, P.A., Mr. Bill Frye, 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 March 2025. This case relates to a workplace injury sustained on 5 May 2009. The hearing record consisted of the hearing transcript and Respondents' Exhibit № 1 (a one-page letter, dated 5 November 2024, to the claimant providing notice of the respondents' motion; a one-page letter motion, dated 1 November 2024, to the Clerk of the Commission seeking dismissal of the claim; and a one-page cover letter and one-page Full Commission Order, both dated 10 September 2014, granting a withdrawal of claimant's then-counsel). I have blue-backed to this opinion the Form AR-C, dated 17 August 2009, and three returned notice letters, sent via Certified Mail (one dated 5 November 2024, one dated 6 December 2024, and one dated 10 February 2025), from the Commission to the claimant. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents are being served on the parties in conjunction with this opinion.

The Form AR-C indicates that the claimant fell from a catwalk on 5 May 2009 and subsequently filed this claim for additional benefits. The most recent action in the claim, before the respondents sought dismissal, appears to be the Full Commission's 10 September 2014 Order granting the withdrawal of the claimant's then-counsel from this matter.

On 1 November 2024, the respondents filed their letter motion with the Clerk seeking a dismissal of this claim under Commission Rule 099.13 ("Rule 13"). Therein, they argued that more than six months had passed without any action being taken by the claimant.

Notice of the respondents' motion was sent to the claimant, consistent with Commission practices, via First Class Mail and Certified Mail, on 5 November 2024. After no response or objection was received by my office, a notice of a hearing on that motion was sent in the same fashion on 6 December 2024. The hearing was originally set for 13 February 2025; but it was canceled and continued upon a request by the respondents. Notice of the rescheduled hearing was sent on 10 February 2025, resetting the date for 13 March 2025. When mailings are returned to the AWCC as not accepted or undeliverable, those mailings are appended to the claim's file. This file includes the return of the three certified notice letters mentioned above, which I have also blue-backed to this opinion. No First Class mailings appear to have been returned to the Commission. All mailings from the Commission were sent to the address maintained by the claimant with the Commission, which is reflected on the Form AR-C.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, which includes the evidence admitted at the hearing and the documents blue-backed to this opinion, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Commission has jurisdiction over this matter.
2. The parties were provided with reasonable notice of the Motion to Dismiss and the hearing on that motion.
3. The evidence preponderates that the claimant has failed to prosecute a claim under Rule 13.
4. The Motion to Dismiss is hereby granted; this claim for additional benefits is dismissed without prejudice under Rule 13.

ADJUDICATION

The respondents appeared on 13 March 2025, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the record reflects no action taken by the claimant in this matter for more than six months preceding their request for a dismissal. The claimant did not respond to the motion or appear at the hearing to argue against the dismissal of his claim.

Our Rule 13 provides for a dismissal for failure to prosecute an action upon application by either party and reasonable notice. Years have passed since the claimant took any action towards prosecuting this claim.

The evidence demonstrates that both parties were provided reasonable notice of the hearing and that no action has been taken on the claim for additional benefits since the Full Commission's Order was filed in 2014. Accordingly, a dismissal under Rule 13 is appropriate.

ORDER

The Motion to Dismiss this claim for additional benefits is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE