

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H306256

DONALD SCHIFFELBEIN, Employee

CLAIMANT

TYSON SALES & DISTRIBUTION, Employer

RESPONDENT

TYNET CORPORATION Carrier/TPA

RESPONDENT

OPINION FILED AUGUST 20, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant not represented by counsel and not appearing at hearing.

Respondent represented by J. MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This case comes on for review following a hearing on respondents' Motion to Dismiss.

On September 26, 2023, the claimant filed an AR-C requesting various compensation benefits in which he alleged injuries to his brain, eyes, heart and lungs due to diesel exhaust exposure on or about June 26, 2023. There has been no request for a hearing. Following the AR-C filing in Arkansas, the claimant pursued his claim in other jurisdictions including Missouri and/or Kansas. No further action has been taken with regard to the Arkansas claim.

On June 14, 2024, the respondents filed a Motion to Dismiss requesting that this claim be dismissed for lack of prosecution. A hearing was scheduled for August 6, 2024. Notice of that hearing was sent to the claimant by certified mail, return receipt requested on July 3, 2024. United States Postal Department records indicate that claimant received and signed for the notice on July 12, 2024. On July 30, 2024, the claimant called the Workers' Compensation Commission

office in Springdale, Arkansas, and spoke with my administrative assistant, indicating that he will not be pursuing his claim in Arkansas and has no objection to the dismissal of his Arkansas claim.

After a review of the respondents' Motion to Dismiss, the claimant's lack of desire to pursue his claim, and his failure to appear at the scheduled hearing, as well as all other matters properly before the Commission, I find that respondents' Motion to Dismiss this claim should be and hereby is granted pursuant to Commission Rule 099.13. This dismissal is without prejudice.

ORDER

Pursuant to the above statement of the case and Commission Rule 099.13, I have no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

If respondents have not already done so, they are directed to pay the court reporter, Veronica Lane, her fees and expenses within thirty (30) days of receipt of her invoice.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**