

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H208829**

**THOMAS SAILOR,  
EMPLOYEE**

**CLAIMANT**

**GREENBRIER CO. INC.,  
EMPLOYER**

**RESPONDENT**

**SENTRY CASUALTY CO.,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JUNE 10, 2024**

Hearing conducted on Wednesday, May 24, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Mr. Thomas Sailor, was represented by the Honorable Andy Caldwell, Little Rock, Arkansas.

The Respondents were represented by the Honorable Carol Lockard Worley, Little Rock, Arkansas. Ms. Worley's law partner Jarrod Parrish argued the motion.

**BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on May 24, 2024, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant's attorney waived his appearance and did not attend the motion hearing.

The Claimant worked for the Respondent/Employer as a welder. Admitted into evidence was Respondent Exhibit 1, correspondence, and pleadings, consisting of twelve pages. I have also blue-backed Form AR-1, March 26, 2024, signed Agreed Order and Andy Caldwell email dated April 11, 2024, *as discussed infra*.

The record reflects on December 19, 2022, a Form AR-1 was filed with the Commission. This form reflects that Claimant allegedly injured his right hand when the hose for a huck gun had a hole in it thus allowing the oil pressure to build and spray through his glove causing a small

wound on November 14, 2022. This alleged injury was reported to the Respondent/Employer on the same day. On January 6, 2023, Respondents filed a Form AR-2 with no statement of position as to whether they were accepting or controverting the claim. Claimant on March 27, 2023, filed a Form AR-C, that further alleged that the injury occurred during the course and scope of his employment. Attorney Carol Worley entered her appearance on behalf of the Respondents on February 14, 2024.

The parties have submitted an agreed order to pay the Claimant benefits along with his legal counsel fee on March 26, 2024. The agreed order upon approval includes a stipulation that both parties would agree to a dismissal of the claim without prejudice. I approved and signed the agreed order on the same day. On March 29, 2024, Respondents' counsel emailed me an order to dismiss the claim without prejudice. I have interpreted both the request to sign the order and the dismissal without prejudice stipulation found in the agreed order as an official request for a motion to dismiss hearing.

Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the Motion to Dismiss 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 not claimed by the Claimant, but the notice sent regular First-Class Mail did not come back to the Commission. On April 11, 2024, Claimant's counsel stated, via email, he had no objection to a dismissal without prejudice and stated his client waives his right to a hearing on Motion to Dismiss hearing. The hearing took place on May 24, 2024. The motion was argued by the Honorable Jarrod Parrish.

**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 24, 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. Respondents argued that both parties stipulated to a dismissal without prejudice through the agreed order and that Claimant's counsel's email again confirmed no objection to a dismissal without prejudice. I interpret these statements as Claimant's refusal to go any further and prosecute his claim beyond the March 26, 2024, agreed order. This position runs counter to AWCC Rule 099.13.

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 has filed his Form AR-C on March 27, 2023. Since then, Claimant has consented to an approved agreed order that contained a stipulation for the dismissal of his claim without prejudice. Based on the foregoing, I do find the Respondents have proven 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