

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H203239**

<b>JAMES J. SMITH, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BULL MOTOR CO., EMPLOYER</b>	<b>RESPONDENT</b>
<b>CENTRAL AR. AUTO DEALERS SIF., CARRIER/TPA</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, TPA</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 6, 2024**

Hearing conducted on Thursday, August 2, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Forrest City, St. Francis County, Arkansas.

The Claimant represented himself, *Pro Se*, Wheatley, Arkansas.

The Respondents were represented by the Honorable Melissa Wood, Little Rock, Arkansas.

**BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on August 2, 2024, in Forrest City, Arkansas. No testimony was taken in the case. Claimant, according to the Commission's file, is *Pro Se*. Admitted into evidence was Respondent Exhibit 1, pleadings, correspondence, consisting of 10 pages. I have also blue-backed Form AR-1, hearing notice for August 2, 2024, and Melanie Miller email dated June 20, 2024, *as discussed infra*.

The record reflects on April 29, 2022, a Form AR-C was filed purporting that Claimant sustained injuries to his right shoulder and upper arm while unloading a transmission from a truck. The tailgate of the truck failed, during the unloading, causing the transmission to drop onto the

right shoulder and upper arm. On May 9, 2022, a Form AR-1 was filed alleging the injury took place December 28, 2020. The form further states that the incident was reported to Respondent/Employer on May 2, 2022. The Claimant worked as a service tech for Respondent/Employer. On May 9, 2022, and again on February 15, 2023, Respondents filed a Form AR-2 and each form did not state a reason for controverting the claim. Respondents, in a letter dated December 12, 2022, agreed to pay Claimant 5% to the body based on his treating physicians (Dr. Swymm's) report. Respondents filed a Motion to Dismiss, via letter, on October 4, 2023. The motion alleges, in short, a failure to prosecute by the Claimant. Claimant was sent notice of the Motion to Dismiss certified and regular First-Class Mail on October 9, 2023. The Claimant responded to the motion on October 30, 2023. The Claimant objected to the dismissal on the grounds that he wanted to reach maximum medical improvement and his permanent partial disability rating has been established. Claimant further alleges his possible need for wage loss benefits. Respondents withdrew their motion to dismiss and, the Claimant his request for a hearing, and the file was returned to general files on November 6, 2023.

Respondents next filed another Motion to Dismiss through attorney, Melissa Wood, for failure to prosecute his claim on April 29, 2024. This motion alleges the same as the first, failure to prosecute. The notice sent out both certified and regular U.S. First-Class Mail on May 29, 2024. Claimant did not claim the certified notice of the Motion to Dismiss but the notice sent regular U.S. First Class mail was not returned to the Commission. The Claimant did not respond to the Motion to Dismiss in writing.

Despite granting the waiver and in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the hearing date via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail on

June 20, 2024, to his address of record. The certified notice was not claimed by Claimant. However, the regular First-Class mail hearing notice was not returned to the Commission. The hearing took place on August 2, 2024.

**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 August 2, 2024, hearing.
3. Respondents have proven by a 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. Claimant did not claim the certified hearing notice sent to his address of record. However, the hearing notice sent U.S. First-Class mail, to his address of record, was not returned to the Commission. The Claimant is responsible for keeping the Commission updated on his current address. Thus, I find by the preponderance of the evidence that Claimant received reasonable notice of the Motion to Dismiss hearing.

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 April 29, 2022. Since returning Claimant's file to general files on November 6, 2023, no bona fide

request for a hearing has occurred. Therefore, I do find that the Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim. Thus, 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, *without prejudice*.

**IT IS SO ORDERED.**

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Steven Porch  
Administrative Law Judge