

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H405444

LONDON M. TALLEY,
EMPLOYEE

CLAIMANT

TRUCKMAT CORPORATION,
EMPLOYER

RESPONDENT

HARTFORD UNDERWRITERS INS. COMPANY,
INSURANCE COMPANY

RESPONDENT

GALLAGHER BASSETT SERVICES, INC.,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED JUNE 6, 2025

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

The Claimant, pro se, failed to appear at the hearing.

Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to a motion to dismiss filed by the Respondents. A hearing on the motion was conducted on May 28, 2025, in Little Rock, Arkansas. Thus, presently the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the May 28, 2025, hearing transcript and documentary evidence. In that regard, Commission's Exhibit 1 encompassing nine (9) actual pages, as it has which has been marked accordingly, and Respondents' Exhibit 1 consisting of nine (9) numbered pages was

thus, so designated.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner established by applicable law.

No testimony was taken at the hearing.

Background

The record reflects the following procedural history:

On August 22, 2024, the Claimant's former attorney filed a Form AR-C, with the Commission, alleging that the Claimant sustained an accidental injury, on August 8, 2024, while working for the respondent-employer. According to this document, the Claimant allegedly sustained compensable injuries when he fell from a ladder injuring his brain, back, neck, and shoulder. Per this form, the Claimant requested both initial and additional benefits in the form of compensation, medical expenses, and an attorney's fee.

The Respondents initially filed a Form AR-2, with the Commission controverting this claim in its entirety. Per this document, the Respondents stated the following grounds for controverting the claim: "Injury did not arise out of and in the scope of employment."

Subsequently, on November 4, 2024, the Claimant's attorney filed with the Commission a motion to withdraw as counsel of record for the Claimant in this matter. On November 22, the Full Commission granted this motion for the Claimant's attorney to withdraw from representing him in this matter.

Since the filing of the Form AR-C, the Claimant has failed to prosecute or otherwise pursue his claim for workers' compensation benefits. Specifically, it has been more than six (6) months since the filing of Form AR-C; but thus far, the Claimant has made no bona fide request for a hearing with respect to his claim.

As a result, on March 24, 2025, the Respondents filed with the Commission a Motion to Dismiss and Incorporated Brief in Support, along with a certificate of service. Per this verification, the Respondents served a copy of the foregoing pleading on the Claimant by placing a copy of it in the mail via the United States Postal Service.

Subsequently, on March 25, 2025, I wrote to the Claimant and requested a written response to the motion within twenty (20) days. Said letter was mailed to the Claimant by both first-class and certified mail to the address listed by the Claimant with the Commission.

Per tracking information received from the Postal Service, on March 29, 2025, the dismissal hearing notice sent by certified mail to the Claimant was delivered to her home address as listed above and left with an individual. However, part of the signature of the recipient of said letter is illegible. The first name is scribbled; but the last name is clearly written and discernible to be the Claimant's last name. About the letter sent by first-class mail, it has not been returned to the Commission.

On April 16, 2025, my office sent a Notice of Hearing to the parties scheduling this matter for a dismissal hearing on May 28, 2025. Said hearing notice was sent to the Claimant by both first-class and certified mail to the same address as before.

Per tracking information received from the United States Postal Service, on May 2, 2025, they were unable to find any delivery information for the hearing notice sent to the Claimant via certified mail. However, on May 12, 2025, the Post Office returned the hearing notice to the Commission, which was sent to the Claimant via certified mail because the item was "unclaimed." Yet, the notice sent by first-class mail has not been returned to the Commission. Thus, the evidence preponderates that reasonable notice of the dismissal hearing was made upon the Claimant.

Therefore, the dismissal hearing was conducted on the Respondents' motion to dismiss this claim as formerly scheduled. Despite having received notice of the dismissal hearing, the Claimant did not appear at the hearing. However, the Respondents appeared at the hearing through their lawyer. The Respondent's counsel argued, among other things, for dismissal of this claim because the Claimant has made no bona fide request for a hearing or taken any action to prosecute or otherwise resolve his claim since the filing of the Form AR-C in November 2024. Specifically, the attorney for Respondents moved for dismissal *without prejudice*, under the authority of Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13.

Adjudication

The statutory provisions and Arkansas Workers' Compensation Rule applicable to the Respondents' motion for dismissal of this claim for workers' compensation benefits are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Ark. Code Ann. §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 provides:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

The evidence shows that the Claimant has failed to respond to the written notices of this Commission, and he did not appear at the hearing to object to the motion. Moreover, since the filing of the Form AR-C, which was done in August 2024, the Claimant has not made a bona fide request for a hearing with respect to his claim. Considering all the foregoing, I am compelled to conclude that the Claimant has abandoned his claim for workers' compensation benefits.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is warranted under the provisions of Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record, 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 Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. In August 2024, the Claimant filed a Form AR-C with the Commission in this matter asserting his entitlement to workers' compensation benefits due to an alleged accidental injury occurring on August 8, 2024.

3. Since the filing of the Form AR-C, more than six (6) months have passed, and the Claimant has not made a bona fide request for a hearing.
4. The Respondents filed with the Commission, a motion to dismiss this claim, for which a hearing was held.
5. Reasonable notice of the motion to dismiss and hearing was had on all the parties.
6. The evidence preponderates that the Respondents' motion to dismiss this claim for want of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 (a)(4), §11-9-702 (d), and Commission Rule 099.13, *without prejudice*, to the refiling of the claim within the specified limitation period.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13 to the refiling of it within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge