

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204763

KIRKLIN V. THOMPSON, EMPLOYEE

CLAIMANT

**DEN TEX CENTRAL INC.
d/b/a DENNY'S CORPORATION, EMPLOYER**

RESPONDENT

**WESCO INSURANCE COMPANY, CARRIER/
AMTRUST NORTH AMERICA, TPA**

RESPONDENT

OPINION FILED JANUARY 22, 2025

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Arkansas on January 14, 2025.

Claimant is represented by Malcolm A. Simmions, Little Rock, Arkansas.

Respondents are represented by their attorney, William C. Frye of North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled matter on January 14, 2025, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Ann. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant waived his right to appearance through his attorney by an email dated January 8, 2025, and did not appear at the time of the hearing. A full hearing had been held on the 5th day of December, 2023, where the claimant contended that he was entitled to temporary partial disability that had started on or about May 1, 2022 and ran up through the end of January and possibly longer, along with additional medical benefits, plus attorney fees. An opinion was issued on February 13, 2024, holding that the claimant was entitled to permanent partial disability benefits of \$3,213.08 less what he had already received, and the applicable attorney fees as spelled out by the Arkansas Workers' Compensation Commission. It was also found that the claimant had failed to satisfy the

required burden of proof that he was entitled to additional medical by the respondent. The last action taken in this matter was the Opinion that was issued on February 13, 2024. Since the time of the above-mentioned opinion, the claimant has been represented by multiple attorneys and the records provide that the claimant was represented by Malcolm A. Simmons at the time of the hearing regarding the Motion to Dismiss on January 14, 2025.

A Motion to Dismiss was filed by the respondents in this matter and appropriate notice was provided to the claimant notifying him that a hearing on the Motion to Dismiss was set for January 14, 2024, in Little Rock, Arkansas. The claimant's representative notified that Commission that the claimant did not wish to proceed with his objection to the Motion to Dismiss. At the time of the hearing, William C. Frye appeared on behalf of the Respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the Respondents, it is found that this matter should be dismissed without prejudice, for failure to prosecute pursuant to A.C.A. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

ORDER

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE