

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F212630

**JOEL MCMANNERS,
EMPLOYEE**

CLAIMANT

**TNT CONSTRUCTION, INC.,
EMPLOYER**

RESPONDENT

**EMPLOYERS MUTUAL
CASUALTY CO.,
INSURANCE CARRIER**

RESPONDENT

**LAWRENCE COUNTY OFFICE
OF CHILD SUPPORT ENFORCEMENT**

INTERVENOR

OPINION FILED SEPTEMBER 27, 2005.

Pursuant to a hearing conducted July 11, 2005, before Administrative Law Judge Richard B. Calaway in Russellville, Pope County, Arkansas, with

Ms. Melissa Ross Criner, Attorney at Law, Little Rock, Arkansas, appearing for the respondents; and

Mr. Bill Stanley, Attorney at Law, Jonesboro, Arkansas, representing the claimant, failing to appear.

STATEMENT OF THE CASE

This is a hearing to consider the motion to dismiss filed on behalf of the respondents. They contended the claim should be dismissed under Rule 13 because the claimant has not sought any type of bona fide hearing before the Commission in more than six months.

A review of the record shows that claimant's counsel filed a Form AR-C November 12, 2002, alleging multiple injuries sustained while working for TNT Construction September 26, 2002. On November 15, 2002, the Commission received a Form AR-2 on behalf of the respondents controverting the claim because the employee worked for a subcontractor for the insured who worked for a general contractor and the employee's boss had filed an exemption with the Commission.

Claimant's counsel asked for a hearing and a telephone prehearing conference was conducted September 15, 2003. At that time, the parties agreed that additional discovery should be completed before scheduling a hearing and the file was returned to general files.

On November 3, 2003, a Notice of Workers' Compensation Withholding for Child Support was filed by the Lawrence County Office of Child Support Enforcement alleging an amount past due of \$11,560.00 in the case of Teri D. Turner v. Joel McManners (E-98-21) (Case ID 691882795). Thereafter, the case remained in general files in an inactive status.

On March 22, 2005, the Commission received the Motion to Dismiss and a hearing was scheduled for June 6 and then rescheduled for July 11 at the request of claimant's counsel. Claimant's counsel further advised that he was unable to locate the claimant and intended to withdraw as attorney of record.

As to the merits, the claimant had contended that he had sustained compensable injuries, at a time when employment services were being performed, arising out of and in the course of his employment either directly with TNT Construction, Inc., or with an uninsured subcontractor of TNT Construction, Inc., acting as a prime contractor, within the meaning of Ark. Code Ann. §11-9-402. An attorney's fee had also been requested while other possible issues had been reserved.

The respondents had contended that the claimant was neither an employee of TNT Construction, Inc., nor the employee of an uninsured subcontractor, so that he was not entitled to benefits for his injuries. They further contended that the claimant was an independent contractor, who had filed a valid Certificate of Non-Coverage with the Commission and that the respondents were without liability under the Act.

Because of the claimant's failure to pursue his claim and his failure to cooperate with his attorney, it appears that the motion should be, and it is hereby, granted and this claim is dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge