

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G708352**

**JOY ALFAKIH, EMPLOYEE**

**CLAIMANT**

**SAF HOLLAND USA, INC., EMPLOYER**

**RESPONDENT NO. 1**

**TRUMBULL INSURANCE COMPANY/  
THE HARTFORD, INSURANCE CARRIER/TPA**

**RESPONDENT NO. 1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED SEPTEMBER 30, 2022**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Ms. Joy Alfakih, *pro se*, failed to appear at the hearing.

Respondents No. 1 were represented by Mr. Rick Behring, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was held on September 22, 2022, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the September 22, 2022, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents No. 1's exhibit packet consisted of twenty-one (21) pages of forms and communication, including the following: the Form AR-C; the

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First Report of Injury; the Form AR-2; the Prehearing Questionnaire Notice and Filing Order sent to the Claimant on June 22, 2022; communication to the Claimant regarding the deadline for responding to the Prehearing Questionnaire; Respondents No. 1's Renewed Motion to Dismiss and Incorporated Brief in Support; notice to the Claimant regarding the Respondents No. 1's Motion to Dismiss; and the August 23, 2022, Hearing Notice. The exhibit was labeled as Respondents No. 1's Exhibit No. 1 and was admitted into evidence.

### **DISCUSSION**

On October 20, 2017, Claimant sustained an admittedly compensable injury to her left shoulder while working for Respondent-Employer. Claimant's attorney of record at that time filed a Form AR-C with the Commission on November 29, 2017. In the Form AR-C, the cause of injury and the part of her body injured, was described as: "During the course and scope of her employment, she suffered injuries to her left shoulder and left hand." Per the Form AR-C, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits.

Respondent-Carrier filed a Form AR-2 with the Commission on November 30, 2017. Respondent-Carrier accepted this claim as compensable. As a result, Respondent-Carrier paid medical benefits for Claimant's work-related injuries of October 20, 2017.

Claimant subsequently requested that her attorney be relieved as counsel of record. Consistent with that request, the Full Commission issued an Order relieving Claimant's attorney as counsel of record on July 26, 2018. Since that time, Claimant has appeared *pro se* in the matter.

On May 7, 2019, Respondents No. 1 filed a Motion to Dismiss due to Claimant's failure to prosecute her claim and her failure to respond to discovery. Subsequently, on May 15, 2019,

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Claimant filed with the Commission a letter requesting a hearing in the matter. In light of Claimant's request, Respondents No. 1's Motion to Dismiss for lack of prosecution was denied.

In June of 2019, with the consent of all parties, the case was re-assigned to the Legal Advisors Division for a voluntary mediation conference. However, on July 1, 2019, once the attempt to set up a mediation conference failed, Claimant filed with the Commission a letter requesting a hearing. In July of 2019, discovery was exchanged; however, in September of 2019, the case was returned to the Commission's general files. Since that time, there was no action taken by Claimant to prosecute her claim, and therefore, on August 16, 2020, Respondents No. 1 filed a second Motion to Dismiss and Brief in Support with the Commission. In response, the Claimant filed a written objection. Claimant appeared at the hearing and again objected to Respondents No. 1's motion. After a hearing on the Motion to Dismiss, an Opinion was rendered by the Commission on December 18, 2020, denying Respondents No. 1's Motion to Dismiss.

On December 30, 2020, rather than submitting her prehearing pleadings, Claimant sent a handwritten letter informing the Commission that she wanted to close her case. Accordingly, the claim was returned to the Commission's general files on January 8, 2021. There was no subsequent action taken by the Claimant to pursue her claim.

Thus, on February 10, 2022, Respondents No. 1 filed a third Motion to Dismiss and Brief in Support with the Commission. On February 11, 2022, the Commission sent a Notice to the Claimant, via certified mail and regular mail, advising her of Respondents No. 1's motion and a deadline for filing a written response. There was no response from the Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated March 7, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents No. 1's Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for March 30, 2022, at 12:30 p.m., at the Phillips County Justice Complex, Judge Wilson's Courtroom, 1804 Martin Luther King Dr., Helena, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. There was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents No. 1's Motion to Dismiss for Failure to Prosecute. Respondents No. 1 appeared through their attorney. Claimant appeared at the hearing and objected to the motion. Subsequent to the hearing on the Motion to Dismiss, an Opinion was rendered by the Commission on June 21, 2022, again, denying Respondents No. 1's Motion to Dismiss. In the Opinion, the Claimant was cautioned that repeated failure to prosecute her claim could result in the claim being dismissed. The Commission also instructed that the prehearing process would begin immediately following the entry of the Opinion.

Consistent with the Opinion of the Commission, the *pro se* Prehearing Questionnaire was mailed to the Claimant on June 22, 2022. The Claimant was instructed to file her prehearing response with the Commission on or before July 11, 2022. The Claimant failed to do so, and the matter was once again returned to the Commission's general files on July 19, 2022. There was no subsequent action taken by the Claimant to pursue her claim.

Thus, on July 27, 2022, Respondents No. 1 filed a (fourth) Renewed Motion to Dismiss and Brief in Support with the Commission. On July 28, 2022, the Commission sent a Notice to the Claimant, via Certified Mail and First-Class Mail, advising her of Respondents No. 1's motion

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and a deadline for filing a written response. There was no response from the Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated August 23, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents No. 1's Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for September 22, 2022, at 1:30 p.m., at the Arkansas Workers' Compensation Commission, 324 South Spring Street, Hearing Room A, 3<sup>rd</sup> Floor, Little Rock, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. United States Postal Service records indicated that the Certified Letter was delivered to the Claimant's address of record on September 1, 2022, at 11:31 a.m., and a signature was obtained. There was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents No. 1's Motion to Dismiss for Failure to Prosecute. Respondents No. 1 appeared through their attorney. Claimant failed to appear at the hearing.

Respondents No. 1's counsel advised that the Claimant had a history of not pursuing her claim in this matter, despite being given several opportunities to do so. He noted that this was the fourth dismissal hearing in this matter and that it had been almost five (5) years from the date of Claimant's injury. Further, it had been three (3) years since Claimant had been released by Dr. Ahmadi at maximum medical improvement with no permanent impairment. Counsel emphasized that there had been no real action in the claim in the months following the Commission's latest opinion on Respondents No. 1's Renewed Motion to Dismiss, which also cautioned the Claimant that repeated failure to prosecute her claim could result in the claim being dismissed. As such,

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Counsel requested that the claim be dismissed, with or without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue this claim for workers' compensation benefits. It has been almost five (5) years since the Claimant filed a Form AR-C in this matter. Although the Claimant appeared at previous dismissal hearings, most recently on March 30, 2022, in this matter and objected to her claim being dismissed, she has, yet again, failed to pursue her claim by not filing a response to the Prehearing Questionnaire within the deadline. Further, since her appearance at the hearing on March 30, 2022, and her objection to the Respondents No. 1's Motion, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute her claim further. Hence, Claimant has failed to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents No. 1's Renewed Motion to Dismiss this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for workers' compensation benefits should be dismissed, without prejudice, to the refile within the applicable time period.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, 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. On October 20, 2017, Claimant sustained an admittedly compensable injury to her left shoulder while working for the Respondent-Employer.

3. On November 29, 2017, Claimant's attorney of record at the time, filed a Form AR-C with the Commission for initial and additional workers' compensation benefits in this matter.
4. Subsequently, on November 30, 2017, Respondent-Carrier filed a Form AR-2 with the Commission, wherein Respondent-Carrier accepted the claim as compensable and paid medical benefits to and on behalf of Claimant for her work-related injuries of October 20, 2017.
5. On May 7, 2019, Respondents No. 1 filed a Motion to Dismiss due to Claimant's failure to prosecute her claim and her failure to respond to discovery. The motion was denied in light of Claimant's objection to the motion.
6. In September of 2019, the case was returned to the Commission's general files. Thereafter, there was no action taken by Claimant to prosecute her claim.
7. On August 16, 2020, Respondents No. 1 filed a second Motion to Dismiss and Brief in Support with the Commission, due to a lack of prosecution. Claimant objected to the motion for dismissal of her workers' compensation claim.
8. After a hearing on the motion, the Commission entered an Opinion on December 18, 2020, denying the Respondents No. 1's Motion.
9. On December 30, 2020, Claimant submitted a handwritten letter asking that her workers' compensation case be closed. Thus, the claim was returned to the Commission's general files.
10. On February 10, 2022, Respondents No. 1 filed a (third) Renewed Motion to Dismiss and Incorporated Brief in Support.
11. Claimant appeared at the hearing on Respondents No. 1's Motion to Dismiss and objected to the Motion. Thereafter, on June 21, 2022, the Commission entered an Opinion denying the Respondents No. 1's Motion.
12. Subsequently, on July 19, 2022, the matter was returned to the Commission's general files. Thereafter, there was no action taken by the Claimant to prosecute her claim as the Claimant failed to file a response to the Prehearing Questionnaire.

13. On July 27, 2022, the Respondents No. 1 filed a (fourth) Renewed Motion to Dismiss for Failure to Prosecute.
14. It has been almost five (5) years since the Claimant sustained a compensable injury and filed a Form AR-C in this matter. While the Claimant has appeared at dismissal hearings and objected to dismissal of her claim, since the most recent hearing on the Respondents No. 1's Motion to Dismiss, the Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve this claim for workers' compensation benefits.
15. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but since the Claimant appeared at the most recent hearing on the Respondents No. 1's Motion and objected to the dismissal of her claim, no action has been taken by the Claimant in furtherance of her claim, as she has failed to timely prosecute this matter.
16. Respondents No. 1's Renewed Motion to Dismiss for Failure to Prosecute is well founded.
17. Respondents No. 1's Renewed Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
18. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**