

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H106149**

**BRITTANY J. BRADSHAW,  
EMPLOYEE**

**CLAIMANT**

**WALMART ASSOCIATES, INC.,  
EMPLOYER**

**RESPONDENT**

**WALMART CLAIMS SERVICES, INC.,  
INS CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED MAY 17, 2022**

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on Thursday, March 25, 2022, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable R. Theodore Stricker, Stricker Law Firm, PLLC, Jonesboro, Craighead County, Arkansas, who waived appearance at the hearing.

The respondents were represented by the Honorable Michael C. Stiles, Mayton, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Tuesday, March 17, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Replacement) and/or Commission Rule 099.13 (2021 Lexis Replacement).

On March 21, 2022, the respondents filed a motion to dismiss (MTD) with the Commission requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of this motion to dismiss, as well as a copy of the notice of the subject hearing via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, to her last known address of record with the Commission.

The Commission's file reflects that on or about May 2, 2022, the claimant called a Commission legal advisor inquiring concerning the respondents' MTD and made reference to the fact she was represented by counsel. Thereafter, the claimant's attorney confirmed he represented the claimant in this matter. By email dated Monday, May 16, 2022 – on which the respondents' attorney was included/cc:'d – the claimant's attorney advised the ALJ as follows: "After discussion with my client we have no objection to Wal-Mart's Motion of Dismissal without prejudice of claim number referenced above." (Commission Exhibit No. 1). Upon receipt of this email the ALJ responded to the email and advised the parties the Commission was still required to hold the subject hearing, and that the claimant's attorney's email of May 16, 2022, would be introduced into evidence and considered as the claimant's waiver of appearance.

The record herein consists of the MTD hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

### **DISCUSSION**

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Repl.), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss for lack of prosecution which they filed with the Commission on March 22, 2022.

Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the well-documented record which includes, but is not limited to the Commission's entire file in this claim, conclusively reveals the claimant has failed and/or refused to request a hearing within the last six (6) months, and she has failed and/or refused to prosecute her claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this claim.
2. Pursuant to the claimant's attorney's email dated May 16, 2022, the claimant has waived her objection to the respondents' MTD filed March 21, 2022, as well as to have waived her appearance at the hearing.
3. The preponderance of the evidence demonstrates the claimant has not requested a hearing within the last six (6) months, and she has taken no action(s) to prosecute her claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on March 21, 2022, should be and hereby is GRANTED. Therefore, this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Mike Pickens  
Administrative Law Judge

MP/mp

