

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H301176**

**ROSEMARY CROSS,  
EMPLOYEE**

**CLAIMANT**

**AR. HEART HOSPITAL, LLC,  
EMPLOYER**

**RESPONDENT**

**BRIDGEFIELD EMPLOYERS INS. CO.,  
CARRIER**

**RESPONDENT**

**SUMMIT CONSULTING, LLC,  
TPA**

**RESPONDENT**

**OPINION FILED JUNE 25, 2024**

Hearing conducted on Wednesday, June 19, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Rosemary Cross, pro se, of Little Rock, Arkansas, did appear in person at the hearing.

The Respondents were represented by the Honorable Guy Alton Wade, Little Rock, Arkansas.

**BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on June 19, 2024, in Little Rock, Arkansas. No testimony was taken in the case. However, Claimant was allowed to argue why her claim should not be dismissed. Claimant, who according to Commission records, is *pro se*.

The Claimant worked for the Respondent/Employer as a dietary aid. The Claimant's alleged injuries occurred on February 4, 2023. Admitted into evidence was Respondents Exhibit 1, pleadings, and correspondence, consisting of 26 pages. I have also blue-backed legal advisor note dated June 15, 2023, email from Melanie Miller to Claimant dated April 9, 2024, certified

U.S. Mail return receipt dated May 15, 2024, Form AR-1, Form AR-2 and Form AR-C, *as discussed infra*.

The record reflects on February 21, 2023, a Form AR-1 was filed with the Commission purporting that Claimant was injured while throwing trash in the dumpster when the weight of the garbage pulled her into the dumpster injuring her left arm, knee, and left side of her back on February 4, 2023. The Claimant notified the Respondent/Employer of her injury on February 6, 2023. Respondents filed a Form AR-2 on February 22, 2023, that contained no statement whether Respondents will controvert the claim. Claimant then filed a Form AR-C on February 28, 2023, reflecting more specifically that Claimant purportedly sustained injuries to her left leg, left knee, back, left ear, and head on February 4, 2023. Attorney Laura Beth York entered her appearance on behalf of the Claimant on February 28, 2023. Attorney Guy Alton Wade entered his appearance on March 31, 2023. On April 20, 2023, Attorney York filed a Motion to Withdraw as Counsel. The motion was granted on May 2, 2023.

The Respondents' counsel, Guy Wade, filed a Motion to Dismiss on May 15, 2023, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent a certified notice of the Motion to Dismiss to her last known address of record on May 23, 2023. The certified notice was unclaimed. Claimant, nevertheless, contacted Catherine Richards, a legal advisor for the Commission, on June 15, 2023, and was informed of the Motion to Dismiss. Claimant stated that she did not get the notice because she had moved to a new home. Claimant then provided her new address to the legal advisor. This information was relayed to me, and I held the Motion to Dismiss in abeyance.

On June 15, 2023, Claimant requested a change of physician from Dr. Scott Carle to Dr. Barry Baskin. Claimant's request was approved on September 12, 2023. However, Respondents

renewed their Motion to Dismiss on December 18, 2023, again claiming the lack of prosecution. The Claimant was sent notice of this motion on December 27, 2023. Claimant received the certified notice on December 29, 2023. The Claimant did not respond to the motion within twenty days. A hearing notice was sent out on the Motion to Dismiss for March 5, 2024. The Claimant appeared at the hearing and before the hearing started, stated she wanted a full hearing. The Motion to Dismiss hearing was cancelled and Claimant was physically handed Respondents' discovery request with the understanding that it is to be answered in 30 days. The Claimant had failed to answer Respondents' discovery or produce the pre-hearing questionnaires sent to her by my office.

The Claimant was notified, via email dated April 9, 2024, that she has not returned the pre-hearing questionnaire to my office nor submitted Respondents' discovery request within the 30 days. The Claimant was warned in the same email that if she doesn't comply by twelve noon, April 12, 2024, another Motion to Dismiss hearing would be set. Claimant failed to answer discovery or return any pre-hearing documents. Thus again, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the Respondents' Motion to Dismiss hearing date at her current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail. The certified notice was claimed by Claimant on May 15, 2024. The hearing took place on June 19, 2024. As mentioned before, the Claimant did show up to the hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.

2. The Claimant and Respondents both had reasonable notice of the June 19, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

### **DISCUSSION**

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. The Claimant was there to defend against the dismissal motion. Claimant argued that she didn't prosecute her claim because she didn't have a lawyer to help her understand the pre-hearing and discovery documents. I don't credit this argument. Claimant was advised months ago that she has the right to hire an attorney or speak to a legal advisor for free to help with her claim. Claimant's contact with the legal advisor when the first Motion to Dismiss was filed and proved successful in getting the motion held in abeyance. There is no reason why Claimant should not feel the use of the free legal advisor would not serve her interest in completing her documents. Claimant next argued that people at her job were getting laid off work and she was afraid that if she pursued her claim she would be fired. I also don't credit this argument because she provided no bases for this belief. She could have contacted a legal advisor and explained her fear of retaliation. But instead, she chose to do nothing.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed her Form AR-C on February 28, 2023, and since then has taken no real action in furtherance of this claim. Claimant's actions do not show she was eager to prosecute her claim despite asking for a full hearing. Claimant was accorded multiple opportunities to prosecute her claim but refused to do so. The Claimant has

failed to provide the pre-hearing questionnaire and participate in discovery. In this regard, the Claimant has failed to do the bare minimum in prosecuting her claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim. And as a result, Respondents' Motion to Dismiss should be granted.

**CONCLUSION**

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is granted and this claim is hereby dismissed without prejudice.

**IT IS SO ORDERED.**

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Steven Porch  
Administrative Law Judge