

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G902546**

**PATRICIA DAVIS,  
EMPLOYEE**

**CLAIMANT**

**HOT SPRINGS SCHOOL DISTRICT,  
EMPLOYER**

**RESPONDENT NO. 1**

**ARKANSAS SCHOOL BOARDS ASS'N  
WORKERS' COMPENSATION TRUST,  
INSURANCE CARRIER/TPA**

**RESPONDENT NO. 1**

**STATE OF ARKANSAS, DEATH & PERMANENT  
TOTAL DISABILITY TRUST FUND**

**RESPONDENT NO. 2**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED AUGUST 19, 2022**

Hearing conducted on Thursday, August 18, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Hot Springs, Garland County, Arkansas.

The claimant, Ms. Patricia Davis, pro se, of Hot Springs, Garland County, Arkansas, did not appear at the hearing.

Respondent No. 1 was represented by the Honorable Karen H. McKinney, Barber Law Firm, Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable Christy L. King, waived appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim on Thursday, July 18, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Replacement).

Respondent No. 1 filed a motion to dismiss and attached relevant exhibits with the Commission on June 20, 2022, requesting this claim be dismissed without prejudice for lack of

*Patricia Davis, AWCC No. G902546*

prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of Respondent No. 1's motion to dismiss, as well as a copy of the hearing notice at her current addresses of record via the United States Postal Service (USPS), First Class, Certified Mail, Return Receipt requested, which she received and for which he signed on July 1, 2022. (Commission Exhibit 1). Thereafter, the claimant did not respond to the respondents' motion in any way, or to cause anyone to do so on her behalf. Moreover, the claimant did not appear at the scheduled hearing. The preponderance of the evidence in the hearing record reveals there exist no justiciable issues in this claim. (Commission's File, and Respondent No. 1's Exhibit 1).

The record herein consists of the 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), 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 Respondent No. 1's motion to dismiss. 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 record conclusively demonstrates the claimant has failed and/or refused to prosecute her claim as required by the applicable Arkansas law.

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. After having received due and legal notice of Respondent No. 1's motion to

dismiss, as well as due and legal notice of the subject hearing, the claimant did not respond to the motion in any way. Moreover, the claimant did not appear at the hearing, nor did she cause anyone to appear on her behalf. Therefore, she is deemed to have waived her right to appear at the hearing, and to have waived objection to Respondent No. 1's motion to dismiss without prejudice.

3. The claimant has to date not prosecuted her claim, nor has she requested a hearing within the last six (6) months. The preponderance of the evidence in the record reveals there exist no justiciable issues in this claim.
4. Therefore, I find Respondent No. 1's motion to dismiss without prejudice filed with the Commission on June 20, 2022, should be and hereby is GRANTED; and 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.

This opinion and order shall not be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone acting legally and on her behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

Respondent No. 1 shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp