

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H106729

ALFREDA DAWSON,  
EMPLOYEE

CLAIMANT

CENTRAL ARKANSAS DEVELOPMENT COUNCIL, INC.,  
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR  
(TPA)

RESPONDENT

OPINION FILED MAY 13, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, appeared at the hearing.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on April 13, 2022 in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (d) (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all the parties in the manner set by law.

The record consists of the April 13, 2022 hearing transcript. Also, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference. The

Respondents introduced into evidence a Respondents' Hearing Exhibit Index consisting of ten (10) numbered pages, which was marked Respondents' Exhibit 1. Respondents' second exhibit included Respondents' Documentary Exhibit, which contained three (3) numbered pages. Said exhibit was marked Respondents' Exhibit 2.

No testimony was taken at the hearing.

### **Background**

The Claimant's attorney filed a Form AR-C with the Commission on August 18, 2021. The following description of the Claimant's alleged injury was provided: "During the course and scope of her employment she suffered injuries to her next [sic], left shoulder, left arm, head, neck and other body parts." The Claimant alleged an accident date was August 17, 2021. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. At the time of the filing of the Form AR-C, the Claimant's attorney wrote a letter to the Commission requesting that this claim be placed in the Commission's open files because it was not ripe for a hearing at that time.

On or about August 31, 2021, the Respondents filed a Form AR-2 with the Commission denying the within claim. Specifically, the claims specialist wrote, in relevant part: "Denied – pending medical investigation."

The Claimant's attorney filed a motion to withdraw from representing the Claimant in this matter on December 30, 2021. The Full Commission granted the motion to withdraw pursuant to an Order filed on January 12, 2022.

Since the filing of the Form AR-C more than six (6) ago, the Claimant has not requested a hearing on the merits of her claim for workers' compensation benefits.

Therefore, on February 18, 2022 the Respondents filed a Motion to Dismiss for Failure to Prosecute the within claim, along with a certificate of service to the Claimant by way of depositing a copy of the foregoing pleading in the United States Mail and/or having faxed the document to her.

On February 28, 2022 the Commission sent a notice to the Claimant of the Respondents' motion to dismiss, with a deadline of March 21, 2022 for filing a written objection to the motion.

Tracking information received by the Commission from the United States Postal Service shows that on March 2, 2022, the notice was delivered to the Claimant's home and left with an individual. Yet there was no response from the Claimant.

Therefore, on March 23, 2022 the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for April 13, 2022 on the Respondents' motion to dismiss. Still, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. During the hearing, the Respondents' attorney renewed his request for the claim to be dismissed due to a lack of prosecution. The Claimant appeared at the hearing to object to the dismissal. According to the Claimant, the Respondents paid some benefits on the claim. However, they subsequently controverted the claim. The Claimant initially agreed with the dismissal. Ultimately, the Claimant became indecisive about her claim being dismissed. Therefore, after much discussion, the Claimant was referred to the Commission's Legal Advisors Division. She was given ten (10) days from the date of the hearing to make a final decision as to whether she agreed with her claim being dismissed, or if she was going to pursue it.

On April 13, 2022, the Claimant sent an e-mail to the Commission stating that after a discussion with the legal personnel and after careful consideration, she has decided to rescind her objection to the motion to dismiss.

### **Discussion**

In that regard, the applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (d) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 provides, in relevant part:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the evidence shows that the Claimant has not requested a hearing since the filing of her claim for workers' compensation. Hence, more than six (6) months have passed since that time. Besides, the Claimant has notified the Commission that she does not object to her claim being dismissed.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim should

be granted under the provisions of Ark. Code Ann. §11-9-702(d) and Rule 099.13 of this Commission. Said dismissal is without prejudice, to the refiling of this claim within the limitation period specified by law.

**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. The parties were provided reasonable notice of the motion to dismiss and hearing thereon.
3. The evidence preponderates that the Respondents' motion to dismiss for want of prosecution is warranted. The Claimant does not object to her claim being dismissed.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702(d) (Repl. 2012) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed without prejudice.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**