

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H100973**

**DOROTHY L. HOGAN, EMPLOYEE**

**CLAIMANT**

**CREST PARK DEWITT, LLC, EMPLOYER**

**RESPONDENT**

**ASIT C/O CCMSI,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 24, 2022**

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

Claimant, Ms. Dorothy L. Hogan, *pro se*, failed to appear at the hearing.

Respondents were represented by Mrs. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on May 18, 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 May 18, 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 by reference. Respondents' exhibit packet consisted of eight (8) pages of forms and communication, including the following: the Form AR-C; the First Report of Injury; the Form AR-2; a benefits printout; the Respondents' Motion to Dismiss; correspondence to the

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Claimant; and the Motion to Dismiss hearing notice. The exhibit was labeled as Respondents' Exhibit #1 and was admitted into evidence.

### **DISCUSSION**

Claimant asserts that she tested positive for Covid-19 while working for Respondent-Employer on September 28, 2020. On January 26, 2021, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of September 28, 2020, and asserted her entitlement to medical expenses and "other." On the Form AR-C, Claimant described the cause of her injury as follows: that she tested "positive for Covid. Been to hospital from Oct 1, 2020 til Oct 13, 2020. Couldn't breathe. Came home with breath. Haven't [gone] back to Crest Park. Bill behind. Due."

On February 22, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable and paying some benefits.

On March 18, 2022, Respondents filed a Motion to Dismiss for Failure to Prosecute. On March 23, 2022, the Commission sent a Notice to the Claimant, via certified mail and regular mail, advising her of Respondents' motion and a deadline for filing a written response. There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated April 14, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for May 18, 2022, at 1:00 p.m., at the Arkansas Workers' Compensation Commission, Hearing Room B, 324 South Spring Street, Little Rock, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. United

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States postal records indicate that the certified mail was delivered on May 3, 2022, at 9:18 a.m. and a signature was obtained. However, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that Respondents accepted the claim as compensable and paid medical and indemnity benefits. Claimant, however, has not taken any action in the matter and has not sought any type of *bona fide* hearing before the Workers' Compensation Commission since she filed the Form AR-C. As such, Counsel requested that the claim be dismissed, 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 her claim for workers' compensation benefits. It has been more than one (1) year and four (4) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute her claim. Hence, Claimant has failed to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion to Dismiss for Lack of Prosecution to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed, without prejudice, to the refiling 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 January 26, 2021, Claimant filed a Form AR-C with the Commission, seeking initial workers' compensation benefits in this matter, specifically medical benefits and "other."
3. On February 22, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim as compensable and paying some benefits.
4. On March 18, 2022, Respondents filed a Motion to Dismiss for Failure to Prosecute.
5. Approximately one (1) year and four (4) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve her claim for workers' compensation benefits.
6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of her claim, as she has failed to timely prosecute this matter.
7. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents' 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.
9. 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.

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**IT IS SO ORDERED.**

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