

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO.:H202153**

ANGELA HOLDAWAY,  
EMPLOYEE

CLAIMANT

DIERKS HEALTH & REHAB CENTER,LLC,  
SELF INSURED EMPLOYER

RESPONDENT

CCMSI,  
THIRD PARTY ADMINISTRATOR (TPA)

RESPONDENT

**OPINION FILED NOVEMBER 17, 2022**

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

The Claimant, pro se, did not appear for the hearing.

The Respondents represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the Respondents' motion to dismiss for want of prosecution, in the above-styled claim on November 9, 2022 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 was whether this matter should be dismissed due to the Claimant's failure to diligently prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was provided to all parties in the manner prescribed by law.

The record consists of the November 9, 2022. Also, the Commission's file was made a part of the record. Therefore, it has been incorporated by reference into the

hearing transcript. Respondents offered into evidence a Respondents' Documentary Exhibit Index consisting of fifteen (15) numbered pages. It was marked as Respondents' Exhibit 1.

No testimony was taken during the hearing.

### **Procedural History**

The Claimant's former attorney filed a Form AR-C with the Commission in the above-styled claim on March 15, 2022. Per this document, the Claimant alleged she sustained an injury while working for the respondent-employer on November 15, 2021. Specifically, in the Form AR-C, the cause of the Claimant's injury and the part of her body injured was described as: "Claimant was squatting down assisting to undress a client to use the restroom. The client let go of the handle on the wall and fell onto the Claimant, causing her to injure her left knee. Claimant sustained injuries to her left knee and other whole body." Counsel requested on behalf of the Claimant, both initial and additional workers' compensation benefits. Particularly, Claimant's counsel checked all of the boxes for both types of benefits.

On or about March 25, 2022, Respondents (the insurance carrier) filed a Form AR-2 with the Commission accepting the claim as a compensable left knee injury. Per this document, the insurance carrier accepted this as a "medical only claim."

However, on or about May 9, 2022, Respondents (the insurance carrier) filed an amended Form AR-2 with the Commission accepting the claim as compensable for a left knee injury. Per this amendment, the insurance carrier paid indemnity benefits on the claim.

Since the filing of the Form AR-C, there has been no activity on the part of the Claimant to pursue her claim for workers' compensation benefits. Most importantly, the Claimant has not requested a hearing since the filing of the Form AR-C, in March 2022.

Therefore, on September 22, 2022, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, with a certificate of service to the Claimant's attorney. This document shows that Respondents served a copy of the motion to dismiss on Claimant's attorney via email.

Subsequently, on September 28, 2022, the Claimant's attorney filed a Claimant's response to the motion to dismiss, with the Commission. To summarize, counsel stated that the Claimant objected to the motion because the Claimant did not receive any temporary total disability or mileage during the course of her claim. As a result, she requested a payment log of benefits, but had not received it to date.

On October 24, 2022, the Claimant's attorney sent an email to the Commission stating that she had been provided the documentation that she requested from the Respondents confirming payment of benefits. As such, the Claimant's attorney withdrew her objection to the Respondents' motion to dismiss.

The Commission sent a Notice of Hearing on October 24, 2022 to the parties by way of certified mail, to inform them that a hearing on Respondents' motion to dismiss was scheduled for November 9, 2022, at 1:00 p.m., at the Commission, in Little Rock.

In the intervening time, on October 26, 2022, the Claimant's attorney filed a motion to withdraw from representing the Claimant in this matter. On November 8, 2022, the Full Commission entered an order approving the Claimant's attorney motion to withdraw from representing her in this claim.

The dismissal hearing was in fact conducted on Respondents' Motion to Dismiss for Failure to Prosecute. The Claimant failed to attend the hearing. Counsel for Respondents appeared and moved that this claim be dismissed without prejudice. Specifically, counsel noted that all appropriate benefits have been paid. As a result, counsel requested that this claim be dismissed without prejudice under the provisions of Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

### **Discussion**

Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

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 reads, in relevant part:

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 record shows that more than six months have passed since the filing of the Form AR-C for the Claimant's admittedly compensable left knee injury of November 2021. However, since this time, the Claimant has failed to make a request for a hearing before this Commission for any additional workers' compensation benefits. The Claimant has not objected to her claim being dismissed. Of significance, the Claimant has not attempted to pursue or otherwise close out her claim. Moreover, the record before me proves that Respondents have paid all appropriate benefits on this claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that Respondents' motion for dismissal of this claim should be granted pursuant to Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13. This 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 Claimant filed a Form AR-C with the Commission on March 15, 2022 for her work-related injury of November 15, 2021. Since this time, Claimant has not requested a hearing or otherwise attempted to pursue her claim.
3. The Respondents filed a Motion to Dismiss for Failure to Prosecute, with the Commission on September 22, 2022.
4. The record shows that the Respondents have paid to and on behalf of the Claimant all appropriate benefits on her claim for workers' compensation benefits.
5. Since the filing of the Form AR-C, the Claimant has not requested a hearing or otherwise attempted to pursue her claim.
6. The Claimant failed to appear at the hearing to object to her claim being dismissed.
7. Reasonable notice of the hearing was attempted on all parties in the manner set forth by law.
8. The evidence preponderates that Respondents' motion to dismiss for want of prosecution is warranted.
9. That Respondents' motion to dismiss this claim is hereby granted pursuant Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, without prejudice, to the refiling within the specified limitation period.

**ORDER**

Based on the foregoing findings of fact and conclusions of law, the claim for workers' compensation benefits filed in this matter is dismissed without prejudice, to the refiling of it within the specified time.

**IT IS SO ORDERED.**

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**Honorable Chandra L. Black**  
**Administrative Law Judge**