

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC CLAIM NO.: H004377**

MARY IVY, Employee	CLAIMANT
POST CEREAL, LLC., Employer	RESPONDENT
ARCH INSURANCE COMPANY, Carrier	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., TPA	RESPONDENT

OPINION AND ORDER FILED JUNE 6, 2022

Hearing conducted before Administrative Law Judge Terry Don Lucy, in Craighead County, Arkansas.

Counsel for the Claimant: Honorable Phillip J. Wells, Attorney at Law, Jonesboro, Arkansas.

Counsel for the Respondents: Honorable Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

The above-captioned matter came on for a hearing on May 27, 2022, with respect to the Respondents' second Motion to Dismiss filed with the Commission on April 13, 2022. When the hall was sounded at the appointed time for the hearing, neither the Claimant nor her Counsel were present for such, nor did they appear during the ensuing proceedings.

The Commission's file in this matter was deemed incorporated by reference into the record without objection for purposes of this Opinion and Order, inclusive of the transcript of prior proceedings held in this matter on October 8, 2021. During such prior proceedings, the Respondents' initial Motion to Dismiss was respectfully denied by the undersigned Administrative Law Judge as reflected by a previous Opinion and Order entered on October 19, 2021, also deemed incorporated by reference herein.

The Commission's file reflects that a Form AR-C was filed in this matter on the Claimant's behalf on September 24, 2020, although no hearing was requested by either party at that time. The Respondents' initial Motion to Dismiss was thereafter filed on August 23, 2021,

and resulted in the above-referenced prior proceedings and subsequent Opinion and Order of October 19, 2021. As a result of such Opinion and Order, this matter was returned to the Commission's general files and the Commission's file reflects no hearing request by either party since that date.

As noted above, and again as reflected by the Commission's file, the Respondents' second Motion to Dismiss followed on April 13, 2022. The Claimant was sufficiently advised of such by both the Commission and the Respondents, with the Claimant being allowed by the Commission to submit a response on or before May 5, 2022. On April 18, 2022, by way of written correspondence to the Commission and the Respondents, Counsel for the Claimant advised that he had received the second Motion to Dismiss, had discussed such with his client, and that there was no objection to a dismissal of her claim. Following discussion of the foregoing sequence of events on the record, the Respondents' second Motion to Dismiss was granted from the bench without prejudice effective May 27, 2022.

Given the Claimant's express lack of objection to the Respondents' second Motion to Dismiss and the corresponding lack of a hearing request on the merits of her claim with respect to either initial or additional benefits since September 24, 2020, a period well in excess of six (6) months from the date of her Form AR-C filing, I specifically find that the Claimant has not prosecuted her claim in a timely manner and that dismissal thereof without prejudice is warranted pursuant to Ark. Code Ann. §§11-9-702(a)(4) and (d), and Commission Rule 099.13, and hereby grant the Respondents' Motion.

The above-captioned matter is respectfully dismissed without prejudice effective May 27, 2022, and the Respondents are ordered and directed to pay the court reporter's fee within thirty days of billing for such.

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IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge