

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H010237

JACQUELINE JONES,  
EMPLOYEE

CLAIMANT

ROCK REGION METRO,  
EMPLOYER

RESPONDENT

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

RESPONDENT

OPINION FILED MARCH 17, 2022

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

Claimant, pro se, failed to appear 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 March 15, 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 (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 hearing transcript of the March 15, 2022. 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 seven (7) numbered pages, which was marked Respondents' Exhibit 1. The Respondents' other exhibit included Respondents' Hearing Exhibit Index Medicals, and it comprised of six (6) numbered pages. Said exhibit was marked Respondents' Exhibit 2.

No testimony was taken at the hearing.

### **Background**

The Claimant's filed a Form AR-C with the Commission on December 29, 2020. Per this document, the Claimant asserted her entitlement to only other benefits, in the form of a change of physician (COP). The Claimant alleged that she sustained a work-related injury to her left shoulder on June 29, 2020.

On or about December 15, 2020 the Respondents filed a Form AR-2 with the Commission accepting this as a compensable claim for an injury to the Claimant's left arm.

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits before the Commission in her claim for workers' compensation benefits.

Therefore, on December 9, 2021 the Respondents filed a letter motion to dismiss due to a lack of activity on this claim since April 2021.

On December 29, 2021, the Claimant wrote a letter to the Commission objecting to her claim being dismissed. The motion to dismiss was held in abeyance based on the Claimant's indication that she wished to pursue her claim.

As a result, on January 5, 2022 the Commission sent preliminary notices and questionnaires to the parties to start the hearing process. The Respondents filed a timely response with the Commission on January 7, 2022. However, the Claimant failed to file a response.

Therefore, on January 31, 2022 the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for March 15, 2022 on the Respondents' motion to dismiss. Tracking information received by the Commission from the United States Postal Service shows that on February 9, 2022, the hearing notice was delivered to the Claimant's home and left with an individual. 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 essentially moved that the claim be dismissed due to a want of prosecution and Claimant's failure to object to the dismissal.

### **Discussion**

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

Specifically, Ark. Code Ann. §11-9-702 (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 reads:

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)

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 pursuant to Rule 099.13. This claim is dismissed without prejudice, to the refiling within the limitation period specified by law. Considering that this claim has been dismissed under Rule 099.13, a dismissal ruling pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) has been rendered moot and not addressed herein.

**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 due to want of prosecution is well founded.
4. That the Respondents' motion to dismiss is hereby granted pursuant to 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, pursuant to Rule 099.13, this claim is hereby dismissed without prejudice.

**IT IS SO ORDERED.**

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CHANDRA L. BLACK  
Administrative Law Judge

