

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G605091

PATRICIA G. KIZZIRE, EMPLOYEE **CLAIMANT**

PETRUS STUTTGART, INC. EMPLOYER **RESPONDENT**

**CENTRAL ARKANSAS AUTO DEALERS SIF/
RISK MANAGEMENT RESOURCES, CARRIER/TPA** **RESPONDENTS #1**

DEATH & PERMANENT TOTAL DISABILITY TRUST FUND **RESPONDENT #2**

OPINION FILED FEBRUARY 22, 2023

Hearing before Administrative Law Judge JayO. Howe in Little Rock, Pulaski County, Arkansas, on January 10, 2023.

Mr. Gary Davis, Attorney-at-Law of Little Rock, Arkansas, appeared on behalf of the claimant.¹

Ms. Karen H. McKinney, Attorney-at-Law of Little Rock, Arkansas, appeared on behalf of the respondent/employer.

The Trust Fund waived appearance.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on January 10, 2023, in Little Rock, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated § 11-9-702 and/or Rule 099.13 of the Arkansas Workers' Compensation Act. The claim involves a compensable knee injury, which allegedly occurred on or about December 21, 2015. An employer/employee relationship existed at the time. A First Report of Injury was filed on July 19, 2016, in which respondents accepted as compensable, an injury to claimant's right knee.

¹ As noted in the respondents' motion, Mr. Davis filed with the Commission a Motion to Withdraw as Counsel on April 27, 2021, and that motion was granted on May 19, 2021. Having been formally relieved of representing the claimant, he nonetheless appeared to assist the claimant in resisting the motion at bar.

The claimant filed an AR-C on November 28, 2017, requesting initial and additional benefits. In an August 14, 2000, Opinion, the Full Commission found that the respondents properly compensated the claimant and that she could not prove a compensable injury to her left knee. No further appeal was taken.

At bar is the respondents' October 12, 2023, Motion to Dismiss for lack of prosecution. A hearing was held at 11:30 a.m. on Tuesday, January 10, 2023, in regard to that motion. A review of the file does not reveal a response from the claimant to the Motion, but she appeared for the hearing and was represented by Mr. Davis. Respondents asserted that there are no issues to justify an open file and that more than six (6) months have passed without a request for a hearing on any issue. (Tr.5) Respondents acknowledged an outstanding billing issue, but put on the record that they are willing to pay any bill appropriately submitted.² *Id.*

Claimant did not argue against or present evidence controverting the respondents' contention that no hearing was requested for at least six (6) months before the filing of their motion. Instead, claimant asserts concern around a bill or some bills that were charged by mistake to Medicare instead of the respondents (Tr.7), as noted by the respondents' counsel. As stated above, however, the respondents made good faith representations that any outstanding billing issues will be addressed appropriately and in-line with their obligations under the law.

² While it is not part of the record, the respondents' counsel echoed, via a January 11, 2023, email, their willingness to fulfill their payment responsibilities with regard to the billing issue discussed at the hearing. Counsel stated:

My client is agreeable to pay what is owed for the compensable right knee. We are requesting a conditional payment search from CMS and will go from there. If the Conditional Payment search does not or cannot separate the right and left knee charges, we will contact the provider and request rebilling for those services.

Based on the record, testimony, and evidence, I am compelled to find that the Motion to Dismiss should be granted due to the claimant’s lack of prosecution and the matter should be dismissed without prejudice.³ Should the respondents fail or refuse to remit payment on properly submitted charges, the claimant may request a hearing for the enforcement of the respondents’ obligations.

ORDER

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed without prejudice at this time.

IT IS SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE

³ As noted in FN 1, Mr. Davis appeared to assist in advancing the claimant’s opposition to dismissal. I gathered, without explicitly asking, that Mr. Davis had other business before the Commission on the day of this hearing and either offered or agreed to step in after either recognizing his former client or being asked to do so by the same. Regardless of how he came to be in the room, it is not relevant to the issue before me now. I only make note to acknowledge an understanding, or at least a notion, that an ongoing attorney-client relationship may not exist. And for that reason, I offer the following for the claimant’s benefit towards a possibly better understanding of the nature of a dismissal *without prejudice*:

From Black’s Law Dictionary (9th ed. 2009), a dismissal without prejudice means a case is “removed from the [Commission’s] docket in such a way that the [claimant] may refile the same [issue] on the same claim.”