

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H101513

EDDIE L. McCLENDON, EMPLOYEE	CLAIMANT
SAFE HARBOR CHURCH OF LITTLE ROCK, EMPLOYER	RESPONDENT
CAROLINA CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED MAY 6, 2022

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

Claimant, pro se, not appearing.

Respondents represented by the Honorable David C. Jones, 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 April 27, 2022 in the above-referenced claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). The sole issue for determination is whether this should be dismissed due to the Claimant's failure to timely prosecute/pursue 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 April 27, 2022. The entire Commission's file has also been made a part of the record. It is hereby incorporated herein by reference. Respondents introduced an exhibit into evidence consisting of forty-three numbered pages, which was marked as Respondents' Exhibit 1. Their second exhibit included two pages, and it was marked as Respondents' Exhibit 2.

No testimony was taken at the dismissal hearing.

### **Procedural History**

The Claimant filed a Form AR-C with the Commission on February 8, 2021 for Arkansas workers' compensation benefits. The Claimant gave the following description of his injury, "Pulling tangled hospital linen from a large cart. Hernia above the growing[sic] area." The date of the Claimant's accident was January 11, 2021. However, the Claimant asserted his entitlement to only additional workers' compensation benefits, in the form of temporary partial disability.

On or about February 17, 2021, the Respondents filed a Form AR-2 with the Commission accepting this as a compensable claim. Specifically, they stated: "This claim has been accepted and benefits are being paid." The record demonstrates that henceforward the Respondents accepted this as a compensable "medical only" claim.

The Claimant sent an electronic message to the Commission on March 5, 2021 requesting a hearing on his claim.

On April 6, 2021, the Commission sent pre-hearing questionnaires to the parties. The Claimant failed to make a timely responsive filing. Therefore, the claim was returned to the Commission's general files on May 12, 2021.

Since this time, there has been no action taken by the Claimant to pursue his claim for additional benefits.

Therefore, on March 1, 2022, the Respondents filed with the Commission a Respondents' Motion to Dismiss and Brief in Support of the Motion to Dismiss, with a certificate of service to the Claimant by way of depositing a copy of the foregoing pleading in the United States Mail.

On March 9, 2022 the Commission sent a notice to the Claimant of the Respondents' motion to dismiss with a deadline of March 30, 2022 for filing a written objection to the motion.

There was no response from the Claimant.

As a result, on March 31, 2022, the Commission sent a Notice of Hearing to the parties letting them know that a dismissal hearing was scheduled for April 27, 2022 on the Respondents' motion to dismiss.

Still, there was no response from the Claimant. However, information received by the Commission from the United States Postal Service shows that both notices from the Commission were delivered to the Claimant's home address and left with an individual in each instance.

A hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents essentially moved in a nutshell that this claim be dismissed due to a lack of prosecution, without prejudice under the provisions of Ark. Code Ann. §11-9-702(a)(4) (Repl. 2012) and Commission Rule 099.13.

### **Discussion**

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

Specifically, Ark. Code Ann. §11-9-702 (a)(4) 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.

Similarly, Commission Rule 099.13 provides:

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)

In the present matter, my review of the evidence shows that the Claimant has not requested a hearing since March 2021. However, after making this request, the Claimant did not make a responsive filing. As a result, this claim was returned to the Commission's general files. Therefore, it has been more than a year since the Claimant made a request for a hearing. The Claimant also failed to respond to the written notices of this Commission. Of particular importance, the Claimant did not attend the hearing to object to his claim being dismissed.

Accordingly, 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 under the provisions of Ark. Code Ann. §11-9-702 (a)(4) and Rule 099.13. This dismissal is without prejudice, to the refile of it 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 parties were provided reasonable notice of the motion to dismiss and the hearing thereon.
3. The evidence preponderates 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 Ark. Code Ann. §11-9-702 (a)(4) and 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, this claim is hereby dismissed under the provisions of Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13 without prejudice, to the refiling within the limitation period specified by law.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**