

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H003891**

**JOANN MORRIS,
EMPLOYEE**

CLAIMANT

**ST. VINCENT MEDICAL CENTER NORTH,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
SEDGWICK CLAIMS MG'T SERVICES, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED SEPTEMBER 29, 2022**

Hearing conducted on Wednesday, September 28, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Diedre J. Levi, pro se, of North Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Zachary Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday September 28, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.).

The claimant initially was represented by counsel in this matter, the Honorable Laura Beth York of the Rainwater, Holt & Sexton law firm based in Little Rock, Pulaski County, Arkansas. On May 23, 2022, the claimant's attorney filed a motion with the Full Commission requesting she

be allowed to withdraw as the claimant's attorney. By order filed June 2, 2022, the Full Commission unanimously granted the claimant's attorney's motion to withdraw.

The respondents filed a motion to dismiss without prejudice with the Commission on June 7, 2022, requesting this claim be dismissed without prejudice for lack of prosecution (motion to dismiss). In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at her current addresses of record via the United States Postal Service (USPS), First Class, Certified Mail, Return Receipt requested. The claimant initially objected to the respondents' motion to dismiss, so the ALJ held a decision on the respondents' motion to dismiss in abeyance pending future developments in the claim. In addition, the ALJ's office mailed the parties' the prehearing questionnaire documents, strongly encouraged the claimant to retain an attorney to represent her in this matter, and scheduled a prehearing teleconference for Tuesday, August 30, 2022.

Before the date of the scheduled prehearing teleconference the claimant contacted the ALJ's office, represented she had tested positive for COVID-19, and advised she would be unable participate in the 30 August 2022 prehearing teleconference. The claimant has not to date retained an attorney to represent her in this matter. The ALJ's office instructed the claimant to complete and file the prehearing questionnaire documents in a timely manner and advised her if she did not do so, the ALJ's office would reschedule the hearing on the claimant's motion to dismiss without prejudice.

When the claimant failed and/or refused to file the prehearing questionnaire documents, the ALJ's office scheduled a hearing on the respondents' motion to dismiss for Wednesday, September 28, 2022, at 12:30 p.m., and the claimant was duly and legally notified of the hearing date, time, and place, and was again provided a copy of the respondents' motion to dismiss. Thereafter the

claimant failed and/or refused to respond to the claimant's motion to dismiss, and she failed and/or refused to appear at the subject September 28, 2022, hearing, or to cause anyone to appear on her behalf.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has withdrawn her hearing request, and failed and/or refused to prosecute her claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. The claimant has to date failed and/or refused to prosecute her claim. In addition, based on the aforementioned facts the claimant is deemed to have failed and/or refused to make a legitimate, good faith hearing request within the last six (6) months. Moreover, based on the aforementioned facts the claimant is deemed to have waived her right to appear at the subject Wednesday, September 28, 2022, hearing on the respondents' motion to dismiss without prejudice.
3. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on June 7, 2022, should be and hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone acting legally and on her behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp