

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H305138**

**TAMBRIA MEANS,
EMPLOYEE**

CLAIMANT

**AIRGAS DRY ICE,
EMPLOYER**

RESPONDENT

**STARR SPECIALTY INSURANCE CO.,
CARRIER/TPA**

RESPONDENT

AMENDED OPINION FILED JULY 1, 2024

Hearing conducted on Wednesday, June 20, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Tambria L. Means, pro se, of Little Rock, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Rick Behring Jr., Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on June 20, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as a delivery driver. The date for Claimant's alleged injury was on July 11, 2023. She reported her injury to Respondent/Employer on August 15, 2023. Admitted into evidence was Respondents Exhibit 1, pleadings and correspondence, consisting of fifteen pages. I have also blue-backed a certified returned envelope received June 11, 2024, *as discussed infra*.

The record reflects on August 11, 2023, a Form AR-C was filed with the Commission through Claimant's then-attorney, Mark Peoples, purporting an alleged shoulder injury. This report

doesn't state which shoulder was injured. On August 23, 2023, a Form AR-1 was filed in this case, reflecting that Claimant purportedly reported to her manager that she woke up with pain. This record does not reflect where the pain was located. Respondents on August 23, 2023, filed a Form AR-2, challenging the compensability of Claimant's alleged injury. In short, this report states that Claimant's injury doesn't meet the burden of proof for a workers' compensation claim. Attorney Rick Behring entered his appearance on behalf of the Respondents on September 6, 2023. On November 28, 2023, the Claimant requested a hearing with the Commission. However, on January 22, 2024, the Claimant, through counsel, withdrew the hearing request and the file was returned to general files. Attorney Peoples filed a Motion to Withdraw as Counsel that was granted on February 26, 2024.

The Respondents next filed a Motion to Dismiss on April 10, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent, certified and regular U.S. Mail, notice of the Motion to Dismiss from my office on April 15, 2024, her last known address. The certified notice was not claimed by Claimant. However, the notice sent regular U.S. Mail was not returned to the Commission. Claimant did not respond to the notice in writing as required. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of Respondents' Motion to Dismiss hearing date at her current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail, on May 10, 2024. The certified notice was returned to the Commission unclaimed but the regular First-Class mail notices were not returned. The hearing took place on June 20, 2024. As mentioned before, the Claimant did not show up to the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the June 20, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. Though the hearing notice was unclaimed and returned to the Commission on June 11, 2024, the same notice was also sent to the Claimant's address of record by First-Class U.S. Mail on May 10, 2024, and did not return to the Commission. The Claimant is responsible for providing the Commission with her current address. The Commission is responsible for providing reasonable notice of a hearing to the Claimant. Sending a hearing notice to the last known address that was provided to it by the Claimant is reasonable. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed her Form AR-C on August 11, 2023, and requested a hearing on November 28, 2023, through her then-attorney Mark

Peoples. However, on January 22, 2024, Attorney Peoples withdrew the request for a hearing and the Claim was returned to general files. Since then, Claimant has not made a demand for a hearing or has taken any other action in furtherance of this claim. In this regard, the Claimant has failed to do the bare minimum in prosecuting her claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim by failing to request a hearing. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is granted *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge