

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H109420**

**VANETTA L. SIMON,
EMPLOYEE**

CLAIMANT

**LITTLE ROCK SCHOOL DISTRICT/
PINNACLE VIEW MIDDLE SCHOOL,
EMPLOYER**

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASS'N
WORKERS' COMPENSATION TRUST/
ARKANSAS SCHOOL BOARDS ASS'N,
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. Vanetta L. Simon, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Jarrod Parish, Worley, Wood & Parrish, P.A., 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 respondents filed a first report of injury form with the Commission on October 25, 2021. Over one (1) month later, on November 30, 2021, the claimant filed a Form AR-C with the Commission on her own behalf. (Respondents' Exhibit 1 at 1-2). The parties mediated this matter on or about April 20, 2022, the parties mediated this matter, which mediation resulted in the

claimant withdrawing her request for a hearing to pursue her statutory right to a one-time-only change of physician (COP). By order filed May 3, 2022, the Commission granted the claimant's COP request to Dr. Krishnappa Prasad. (RX1 at 6-8). Thereafter, neither the Commission nor the respondents received any further communication from the claimant.

The respondents filed a motion to dismiss without prejudice (motion to dismiss) with the Commission on August 10, 2022, requesting this claim be dismissed without prejudice for lack of prosecution. 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 with the Commission via the United States Postal Service (USPS), First Class, Certified Mail, Return Receipt requested. The claimant failed and/or refused to appear at the subject September 28, 2022, hearing, nor did she cause anyone to appear on her behalf. (RX1 at 9-13).

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 make any concerted, consistent effort to prosecute her claim. In addition, based on the aforementioned facts – specifically, the fact the claimant withdrew a hearing request to pursue her COP – which the Commission granted by order filed May 3, 2022 – the claimant herein is deemed to have failed and/or refused to make a valid 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 August 10, 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