

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H100705**

**DELLA R. STEVENS,
EMPLOYEE**

CLAIMANT

**SODEXHO, INC.,
EMPLOYER**

RESPONDENT

**GALLAGHER BASSETT SERVICES, INC.,
INS CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED JUNE 6, 2022**

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on Wednesday, June 1, 2022, in Arkadelphia, Clark County, Arkansas.

The claimant, Ms. Della R. Stevens, of Sparkman, Dallas County, Arkansas, appeared pro se.

The respondents were represented by the Honorable Jarrod Parrish, Worley, Wood & Parrish, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

Pursuant to an Amended Prehearing Order filed March 29, 2022, a hearing on the merits of this claim was scheduled for Wednesday, June 1, 2022. However, when the claimant appeared at the hearing pro se, she tearfully advised she had been trying to find an attorney to represent her in this claim but to date had been unable to do so. The attorney who initially represented the claimant in this matter made a motion to withdraw as her counsel, which the ALJ granted pursuant to an order filed with the Commission on June 14, 2021. Thereafter, on September 14, 2021, the respondents filed a motion to dismiss (MTD) this claim without prejudice for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Replacement), and/or Commission Rule 099.13 (2021 Lexis Replacement). The claimant objected to her claim's dismissal, and a

prehearing conference was conducted which resulted in the aforementioned Amended Prehearing Order filed March 29, 2022, which set the hearing on the merits for Wednesday, June 1, 2022. The respondents' MTD filed September 14, 2021, was deemed to be held in abeyance.

On the record at the Wednesday, June 1, 2022, hearing on the merits, the claimant appeared pro se and tearfully and sincerely advised she did not wish to proceed with the hearing without the benefit of counsel. She requested an additional 45 days to try to find an attorney to represent her in this claim. The ALJ advised both parties he would not force the claimant to proceed to a hearing pro se against her wishes. The respondents objected to what was essentially the claimant's request. First, the respondents made a motion that if the ALJ granted the claimant's motion for an additional 45-days to find an attorney, the claim should be dismissed with prejudice. They contended the claimant has had sufficient time to retain counsel; and that they came prepared to try the case today, as their two (2) potential insured representative witnesses were present and ready to testify. Second, as an alternative argument, the respondents renewed their MTD filed September 14, 2021, requesting the claim be dismissed without prejudice for lack of prosecution.

After giving both parties the opportunity to make their respective arguments on the record, the ALJ denied the respondents' request to dismiss the claim with prejudice. The ALJ granted the claimant's request for an additional 45 days to provide her one (1) last opportunity to find an attorney to represent her in this matter. The ALJ advised the claimant on the record that while he could not appoint, recommend, or refer her to an attorney, the claimant could call the Commission's legal advisor division, conduct an Internet search for attorneys specializing in workers' compensation in Arkansas and specifically in the area of her hometown and surrounding towns, or simply ask someone living in the area of Arkadelphia, Hope, or Texarkana, AR for a suggestion and/or recommendation of a workers' compensation attorney.

The ALJ *granted the respondents' MTD without prejudice filed September 14, 2021*, which had been held in abeyance, on the rationale the claimant had been given prior opportunities to search for and retain counsel, and that the respondents had in fact taken the time and effort to prepare for the hearing – including bringing their two (2) potential employer representative witnesses to Arkadelphia for the hearing – which, of course, required them to miss work, and to expend time, effort, and money to both prepare and appear at the subject hearing on the merits.

The ALJ further and specifically advised the claimant on the record that since he had granted the respondents' MTD without prejudice, either she or any attorney she retained or any other person acting with her permission and on her behalf would *be required to file a new Form AR-C with the Commission before the date of the expiration of the applicable statute of limitations (S/L), which in this claim is on or about October 16, 2022*. If the claimant fails and/or refuses to file a new Form AR-C on or before the date the S/L expires, or to cause one to be filed on her behalf on or before applicable S/L expires on or before October 16, 2022, her claim *would effectively be deemed to be dismissed with prejudice as a matter of law and forever barred* without either the respondents or the Commission being required to take any further action.

The ALJ also advised the claimant on the record that his office would reschedule a hearing on the merits at the parties' earliest convenience, which hearing date would be sometime after the expiration of the 45-day deadline, which deadline began running on the day of the subject, previously scheduled hearing – *i.e.*, Wednesday, June 1, 2022. Finally, and significantly, the ALJ advised the claimant on the record that if she was unable to obtain counsel to represent her, she would be required to represent herself at the next scheduled hearing date or, if she chose not to represent herself, she had the option of relinquishing her claim.

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

DISCUSSION

As set forth above in more detail, this claim initially was scheduled and intended to be a hearing on the merits. However, when the claimant arrived at the hearing pro se, she tearfully and sincerely advised she did not wish to proceed with the hearing on the merits as scheduled. Therefore, consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Repl.), 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 conducted a hearing on the respondents' motion to dismiss for lack of prosecution which they filed with the Commission on September 14, 2021, which had been held in abeyance.

Rather than recite a detailed analysis of the record, suffice it to say as is demonstrated by all the aforementioned facts, the preponderance of the evidence adduced at the hearing and contained in the well-documented record, which includes but is not limited to, the Commission's entire file in this claim, conclusively reveals the claimant has failed and/or refused to proceed with the previously scheduled hearing as set forth in the Amended Prehearing Order filed March 29, 2022, and, therefore, has effectively 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 is hereby GRANTED an additional, and last/final, 45 days (from 6/1/2022) to retain counsel to represent her in this claim.

3. Furthermore, the respondents' motion to dismiss without prejudice filed with the Commission on September 14, 2021, should be and hereby is GRANTED. Therefore, 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.
4. If the claimant wishes to prosecute this claim either she, or any attorney she may retain to represent her in this matter, or any other person acting with the claimant's permission and on her behalf, ***shall refile a Form AR-C with the Commission on or before the date of the expiration of the applicable S/L, which is on or about October 16, 2022.*** Should she fail to file or caused to be filed a new Form AR-C on or before the expiration date of the applicable S/L as set forth above, this claim shall be deemed dismissed with prejudice by operation of law without either the respondents or the Commission being required to take any further action whatsoever.

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp

