

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H204774**

DAWN WALTERS, EMPLOYEE	CLAIMANT
McCLURE & ASSOCIATES HOLDINGS CO., LLC, EMPLOYER	RESPONDENT
CAROLINA CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
BERKLEynet, THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED JUNE 29, 2023**

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

Claimant, pro se, failed to appear for the hearing.

Respondents represented by the Honorable Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on June 27, 2023, in the present matter before this Commission for a determination of whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the June 27, 2023, hearing and the documents contained therein. Specifically, the Respondents' Hearing Exhibit consisting of eight pages was

marked as Respondents' Exhibit 1. Additionally, the entire Commission's file has also been made a part of the record. It is hereby incorporated into the hearing transcript by reference.

### **Discussion**

On July 1, 2022, the Claimant's attorney filed with the Commission a claim for workers' compensation benefits on behalf of the Claimant by way of a Form AR-C. Specifically, the Claimant's attorney described the alleged incident as follows: "During the scope and course of employment the Claimant sustained injuries to the right knee and other whole body." These alleged injuries occurred on January 26, 2022. The Claimant's attorney checked all the boxes for both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on July 26, 2022, wherein they accepted compensability of the claim as a "Medical" only claim.

On or about March 22, 2023, the Claimant's attorney filed with the Commission a Motion to Withdraw requesting to be relieved as counsel of record for the Claimant in this matter. The Full Commission entered an order granting the motion for Claimant's attorney to withdraw as counsel of record for the Claimant in this matter on April 6, 2023.

Since the filing of the Form AR-C, there has been no action whatsoever taken on the part of the Claimant to prosecute this claim, or otherwise pursue any type of workers' compensation benefits.

Therefore, on April 13, 2023, the Respondents attorney filed a Respondents' Motion to Dismiss with the Commission requesting to have the within claim dismissed due to the Claimant's failure to prosecute it. Per this motion, the Respondents attorney contended that more than six months have lapsed since the filing of the Form AR-C without a request for a hearing.

The Commission sent a notice to the Claimant's last known address listed in the Commission's file to notify her with of the Respondents' motion to have her claim dismissed. Said notice was mailed to the Claimant on April 24, 2023. Per this correspondence, the Claimant was given a deadline of twenty days for filing a written response to the Respondents' motion. Said notice was mailed to the Claimant by both certified and first-class mail via the United States Postal Service. The notice sent by certified mailed was returned to the Commission on May 16, 2023, marked as "unclaimed mail." However, the letter sent by first-class mail has not been returned.

Yet, there was no response from the Claimant.

Therefore, this matter was set for a dismissal hearing. Pursuant to a Hearing Notice dated May 18, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. Said hearing was scheduled for June 27, 2023, at 10:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

On June 1, 2023, the United States Postal Service informed the Commission that they delivered the above item to the Claimant's home and left it with her. Hence, the return receipt bears the Claimant's signature.

Still, there was no response from the Claimant.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney.

Counsel noted among other things, that the Claimant has done nothing to pursue her claim for workers' compensation benefits since the filing of the Form AR-C. Most significantly, counsel noted that the Claimant failed to follow-up with medical appointments scheduled for her by the Respondents. Therefore, counsel moved that this claim be dismissed "with" prejudice under Ark.

Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, due to the Claimant's failure to seek medical treatment, and because she has not requested a hearing since the filing of the claim more than six months ago.

The record before me shows that a request for a hearing has not been made by or on behalf of the Claimant since the filing of the Form AR-C, which was over more than six (6) months ago. Most notably, the Claimant failed to appear at the dismissal hearing to object to her claim being dismissed. Moreover, the Claimant has failed to respond to the notices of this Commission. Hence, the preponderance of the evidence shows that the Claimant has abandoned her claim for workers' compensation benefits. Therefore, based on all of the foregoing reasons, I therefore find that the dismissal of this claim is warranted, pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13. This dismissal is *without* prejudice, to the refiling 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 evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits under the provisions of Ark Code Ann. §11-9-702, and Commission Rule 099.13.
3. The Respondents' motion to dismiss this claim is well founded.
4. Appropriate Notice of the dismissal hearing was tried on all parties to their last known address, in the manner prescribed by law.
5. This claim is hereby respectfully dismissed, *without* prejudice, under Ark. Code Ann. §11-9-702, and Rule 099.13, to the refiling of it within the period of time specified by law.

**ORDER**

In accordance with the findings and conclusions of law set forth above, this claim is hereby dismissed pursuant to the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without* prejudice to the refiling of it, within the limitation period as specified by law.

**IT IS SO ORDERED.**

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