

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G806414**

**HEATHER ZIMMER, EMPLOYEE**

**CLAIMANT**

**BILL'S SUPERFOODS, INC., EMPLOYER**

**RESPONDENT #1**

**ZMAT INS. CO./ ZENTIH INS. CO. CARRIER/TPA**

**RESPONDENT #1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT #2**

**OPINION FILED SEPTEMBER 20, 2022**

**Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas, on September 6, 2022.**

**Claimant is represented by Mr. Mathew J. Ketcham, Attorney-at-Law, of Ft. Smith Arkansas, who appeared on her behalf. The claimant failed to appear in person.**

**Respondents #1 are represented by Mr. James A. Arnold, II, Attorney-at-Law, of Ft. Smith Arkansas.**

**Respondents # 2 are represented by Mr. David L. Pake, Attorney-at-Law, of Little Rock, Arkansas.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on September 6, 2022, in Little Rock, Arkansas, on Respondents No. 1 "Third Motion to Dismiss" for failure to prosecute pursuant to Arkansas Code Annotated §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant's attorney filed a Form AR-C on June 26, 2019. On December 20, 2019, Respondents No. 1 filed its first Motion to Dismiss for want of prosecution and the claimant's attorney filed an objection and requested a hearing. The previous Administrative Law Judge assigned to the case sent notice to the parties regarding pre-hearing filings including notice to the Claimant to file a completed questionnaire within twenty (20) days from the notice. No response to the questionnaire

was filed by the claimant. By an agreement of the parties, mediation was requested, but was cancelled due to COVID. Mediation was rescheduled for September 30, 2020, but was again cancelled, this time due to the Claimant's request for a change of physician which took place on April 5, 2021.

A second Motion to Dismiss was then filed by Respondents No. 1 on November 3, 2021, and again the Claimant's attorney objected to the motion and requested a hearing. On November 30, 2021, an Order was entered which held the Second Motion to Dismiss in abeyance and a Prehearing Conference was scheduled for January 31, 2022. The conference was in fact held and the matter was scheduled for a full hearing on April 26, 2022.

The Claimant's deposition was scheduled on or about March 28, 2022, and although the deposition commenced, the Claimant got up and left in the middle of the deposition, apparently not liking the questioning by Respondents. The hearing that was set for August 26, 2022, was then cancelled at the request of Respondent No. 1, and the matter was returned to general files. Respondent No. 1 filed a "Third Motion to Dismiss" on July 15, 2022. After proper notice, the hearing on the Motion to Dismiss was set for September 6, 2022, in Little Rock Arkansas. James A. Arnold II appeared on behalf of Respondents No. 1, Matthew Ketchum appeared on behalf of the Claimant who failed to appear, and the Death and Permanent Disability Fund waived its appearance. The Claimant had not sought any type of *bona fide* hearing before the Workers' Compensation Commission for the last six (6) months. The attorney of record for the Claimant stated he had contacted the Claimant and she contended she was in the process of looking for a new attorney, she was not happy with her representation, and she denied receiving

notice. Since the date of the hearing, the Claimant's attorney has filed a Motion to Withdraw and the claimant has emailed the Commission stating that she is terminating her attorney and would hire another one by the end of the day. The email is blue-backed and attached to this Opinion. It is further noted that as of the date of issuing this Opinion, the Claimant has not contacted the Commission with the name of an attorney. In fact no attorney has contacted the Commission in regard to representing the Claimant even though a period of time has passed since the electronic communication.

After a review of the record as a whole, to include all evidence properly before the Commission, having had an opportunity to hear the statements of the Respondent's and Claimant's attorneys , after finding that proper notice was mailed to the Claimant, after the Claimant's personal representative being present as an officer of the court and then filing a motion to withdraw, and after the Claimant sending an email stating that she was going to hire an attorney by the end of the day and then a period of time passed with no attorney of record notifying the Commission, there is no alternative but to find that the Motion to Dismiss should be granted at this time. The Claimant has failed to comply with discovery and other Orders of the Commission and the matter should be dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

**ORDER**

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed without prejudice at this time.

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IT IS SO ORDERED:

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JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE