

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.:H406966

MARY BYERS,
EMPLOYEE

CLAIMANT

D & D FOODS, INC.,
EMPLOYER

RESPONDENT

AR McDONALDS SELF INSURED TRUST/
RISK MANAGEMENT RESOURCES,
CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 11, 2026

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

Claimant represented by the Honorable Gary Davis, Attorney at Law, Little Rock, Arkansas. Mr. Davis waived his appearance at the hearing.

Respondents represented by the Honorable Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss this claim due to a lack of prosecution, on June 10, 2026, in this workers' compensation claim pursuant to *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110(d)).

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 June 10, 2026, hearing and the documents held therein. Respondents' Exhibit 1 is a Hearing Exhibit Index made up of thirteen numbered pages, and a cover sheet.

No testimony was taken at the hearing.

Procedural History

On or about November 18, 2024, the Claimant's attorney filed a Form AR-C alleging that she sustained a compensable injury in the course and scope of his employment with the respondent-employer on September 18, 2024. The Claimant alleged that she sustained an injury to her right foot. Per the Form AR-C, the Claimant's attorney requested both initial and additional benefits.

The Respondents filed a Form AR-2 with the Commission on October 28, 2024, accepting the claim as a "Compensable lost claim." They have paid benefits to and on behalf of the Claimant in this matter.

Since the filing of the Form AR-C in November 2024, the Claimant has made no request for a hearing on the merits in her claim. Moreover, the Claimant has not taken any affirmative action whatsoever to pursue her claim for workers' compensation benefits.

Therefore, the Respondents filed a *Motion to Dismiss for Failure to Prosecute* with the Commission on March 18, 2026, along with a certificate of service to the Claimant's attorney showing that a copy of this pleading was forwarded to him via email.

On March 23, 2026, my office sent a letter to the Claimant and his attorney letting them know about the motion for dismissal of his workers' compensation claim, along with a deadline of twenty days for filing a written objection/response.

The Claimant's attorney sent an email to the Commission on June 8, 2026, stating, in relevant part: "We will submit to a dismissal without prejudice..."

A hearing was conducted before the Commission, on the Respondents' motion to dismiss on June 10, 2026. During the hearing, counsel for the Respondents moved that this claim be dismissed due to a lack of prosecution under Ark. Code Ann. §11-9-702 and/or 11 C.A.R. §25-110 (d), without prejudice. Counsel specifically noted that the Claimant's attorney has consented to the dismissal without prejudice. More importantly, counsel noted that the Claimant has not filed a request for a hearing since this filing of the Form AR-C. As such, the Respondents' attorney argued, among other things, that the Claimant has failed to prosecute this claim and has not identified a plan for pursuing or reaching a resolution in this matter.

Adjudication

Therefore, the statutory provisions applicable in this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Ark. Code Ann. §11-9-702(d) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

The Arkansas Workers' Compensation Rule applicable in this motion for the dismissal of this claim is outlined below:

11 C.A.R. §25-110(d) reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for a hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the evidence in this matter shows that more than six months have passed since the filing of this claim. However, since that time, the Claimant has failed to make a bona fide request for a hearing with respect to her claim for workers' compensation benefits. Hence, no probative action whatsoever has been put forth by the Claimant to resolve her claim. The Claimant does not object to her claim being dismissed *without prejudice*.

Considering all the foregoing evidence, I am compelled to conclude that the Claimant has abandoned her claim for workers' compensation benefits. Hence, the Claimant has failed to prosecute her claim.

Therefore, based on all the aforementioned reasons, I find that the Respondents' motion to dismiss this claim is warranted. Therefore, pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and Commission Rule 099.13 (as codified at 11 C.A.R. §25-110 (d)), this claim is hereby respectfully dismissed for want of prosecution. Said dismissal is *without prejudice*, to the refiling of this claim 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 Respondents filed with the Commission a motion for dismissal of this claim due to a lack of prosecution, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of the Form AR-C, which was done more than six months ago. She does not object to her claim being dismissed. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and 11 C.A.R. §25-110 (d), *without prejudice*, to the refiling of it within the limitation period specified by law.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) and 11 C.A.R. §25-110 (d), this claim is hereby respectfully dismissed, *without prejudice*, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge