

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H308104**

PATRICIA CASTELLANO, EMPLOYEE	CLAIMANT
INTEGRITY, INC., EMPLOYER	RESPONDENT
ATA WORKERS' COMP. SI TRUST, CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED SEPTEMBER 11, 2024

Hearing conducted on Tuesday, September 10, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Patricia Castellano, pro se, of Jacksonville, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Carol Worley, Little Rock, Arkansas. The Honorable Melissa Wood, law partner of Ms. Carol Worley, argued the motion.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on September 10, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as a delivery driver. The date for Claimant's alleged injury was on December 1, 2023. She reported her injury to Respondent/Employer on December 4, 2023. Admitted into evidence was Respondents Exhibit 1, pleadings and correspondence, consisting of 10 pages. I have also blue-backed Form AR-1, a

certified return receipt dated July 13, 2023, copy of certified envelope received August 29, 2024, and copy of hearing notice, *as discussed infra*.

The record reflects on December 15, 2023, a Form AR-1 was filed with the Commission purporting that claimant was a Direct Care Supervisor for Respondent/Employer. That she injured herself when, at a client's home while getting out of bed to use the restroom, she slipped, fell, and injured her right foot. On December 18, 2023, a Form AR-2 was filed in this case, denying compensability of the claim. On January 2, 2024, Claimant filed a Form AR-C through her then-attorney, Mark Peoples, purporting an alleged foot and knee injury. Attorney Carol Worley entered her appearance on behalf of the Respondents on January 9, 2024. Attorney Peoples filed a Motion to Withdraw as Counsel that was granted on April 15, 2024, citing differences of opinions in how to prosecute claim. This motion was granted by the Full Commission on May 3, 2024.

The Respondents next filed a Motion to Dismiss on July 9, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent, certified and regular U.S. Mail, notice of the Motion to Dismiss from my office on July 11, 2024, her last known address. The certified notice was claimed by Claimant on July 13, 2024. Also, the notice sent regular U.S. Mail was not returned to the Commission. Claimant did not respond to the notice in writing as required. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of Respondents' Motion to Dismiss hearing date at her current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail, on August 7, 2024. The certified notice was returned to the Commission unclaimed but the regular First-Class mail notices were not returned. The hearing took place on September 10, 2024. As mentioned before, the Claimant did not show up to the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the September 10, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with reasonable notice, on the Respondents' Motion to Dismiss. Though the hearing notice was unclaimed and returned to the Commission on August 29, 2024, the same notice was also sent to the Claimant's address of record by First-Class U.S. Mail on May 10, 2024, and did not return to the Commission. The Claimant is responsible for providing the Commission with her current address. The Commission is responsible for providing reasonable notice of a hearing to the Claimant. Sending a hearing notice to the last known address that was provided to it by the Claimant is reasonable. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed her Form AR-C on

January 2, 2024. Since then, Claimant has not made a demand for a hearing or has taken any other action in furtherance of this claim. In this regard, the Claimant has failed to do the bare minimum in prosecuting her claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim by failing to request a hearing. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is denied.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge