

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H306897**

**STEPHANIE DORITY,
EMPLOYEE**

CLAIMANT

**ACE HARDWARE CORP.,
SELF-INSURED EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA,
CARRIER**

RESPONDENT

**ESIS, INC.,
THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JUNE 28, 2024

Hearing conducted on Wednesday, June 25, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Stephanie L. Dority, pro se, of Conway, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Michael E. Ryburn, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on June 25, 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 October 7, 2022. She reported her injury to Respondent/Employer on the same day. Admitted into evidence was Respondents Exhibit 1, Motion to Withdraw and Form AR-C, consisting of three pages. I have also blue-backed Form

AR-1, Form AR-2, a certified returned receipt dated June 8, 2024, Melanie Miller email dated May 23, 2024, and Motion to Dismiss hearing notice, *as discussed infra*.

The record reflects on October 20, 2023, a Form AR-C was filed with the Commission through Claimant's then-attorney, Mark Peoples, purporting she injured her neck, back, leg, knee, and head. On October 31, 2023, a Form AR-1 was filed in this case, reflecting that Claimant injured herself while moving product off a pallet when her right foot was caught, and she fell. Respondents on October 31, 2023, filed a Form AR-2, accepting compensability. Respondents' Counsel, Michael Ryburn, entered his appearance on November 9, 2023. Attorney Peoples filed a motion to Withdraw on February 26, 2024, citing differences of opinion regarding the prosecution of this case. The Motion to Withdraw was granted on March 20, 2024.

The Respondents' filed a Motion to Dismiss on April 18, 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 April 24, 2024, to her last known address. The certified notice was returned unclaimed by Claimant on May 9, 2024. The notice sent regular U.S. Mail did 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 May 23, 2024. The certified notice was returned to the Commission unclaimed, but the regular First-Class mail notice was not returned. The hearing took place on June 25, 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 June 25, 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 proper notice, on the Respondents' Motion to Dismiss. Though the hearing notice was unclaimed and returned to the Commission on June 8, 2024, the same notice was also sent to the Claimant's address of record by First-Class U.S. Mail on May 23, 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 October 20, 2023, and since then, Claimant has not made a demand for a hearing or has taken any

other action in furtherance of the prosecution 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 and moving her claim forward. 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 granted *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge