

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC CLAIM NO. H105747**

**CARISSA G. HETZEL,
EMPLOYEE**

CLAIMANT

**ARKANSAS HEART HOSPITAL, LLC,
EMPLOYER**

RESPONDENT

**AMERISURE INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED AUGUST 21, 2024

Hearing before Administrative Law Judge Steven Porch on August 20, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant represented herself, Pro se, Little Rock, Arkansas.

The Respondents were represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by the Respondent on June 24, 2024. The Claimant worked as a dietary aide for Respondent/Employer. Admitted into evidence is Respondents' Exhibit 1, Motion to Dismiss with exhibits attached, consisting of 7 pages, Respondents' Exhibit 2, June 26, 2024, notice letter for Motion to Dismiss, consisting of 1 page, and Respondents' Exhibit 3, Hearing Notice, consisting of 1 page. I have also blue-backed February 8, 2022, hearing request memorandum, postal return receipt dated July 11, 2024, and Melanie Miller email dated August 19, 2024, involving a phone call from the Claimant, *as discussed infra*.

The record reflects on July 19, 2021, a Form AR-1 was filed alleging Claimant allegedly injured the left side of her head behind the ear. Claimant's injury occurred on March 29, 2021.

Claimant reported the injury to Respondent/Employer on June 29, 2021. Respondents filed a Form AR-2, on July 19, 2021, controverting the claim in its entirety. Claimant on August 30, 2021, requested to have a hearing because her claim was denied by Respondents. On September 9, 2021, filed a Legal Advisor Claimant Questionnaire alleging her claim is more than \$2,500.00, but would like to mediate the claim before a full hearing. The Respondents in an email dated January 14, 2022, made clear that they will not change their position and accept the claim. A legal advisor conference was held with no resolution and the file was returned to general files since contact had been lost with Claimant to continue the hearing process.

The Respondents next filed a Motion to Dismiss on June 24, 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 on June 26, 2024, to her last known address of record. The certified notice was not claimed by Claimant per postal receipt dated July 11, 2024. Likewise, 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 July 19, 2024. The certified notice was not claimed by the Claimant per postal receipt. The regular First-Class hearing notice was not returned to the Commission. However, Claimant contacted my assistant, Melanie Miller, on August 19, 2024, via telephone call, and stated that she does not want to pursue her claim and does not object to the dismissal. She further stated that she will not be at the hearing. The hearing took place on August 20, 2024, and the Claimant did not show up to the hearing.

II. 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 in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. All parties received reasonable notice of the August 20, 2024, Motion to Dismiss hearing date.
3. Respondents did prove by a preponderance of the evidence that Claimant has failed to prosecute her claim under AWCC R. 099.13.
4. The Motion to Dismiss should be, and hereby is, granted.
5. This claim is hereby dismissed without prejudice.

III. DISCUSSION

AWCC 099.13 provides:

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.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Consistent with AWCC Rule 099.13, as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the Respondents' Motion to Dismiss. I do find

by the preponderance of the evidence, introduced at the hearing and contained in the record, that Claimant has neither made a bona fide request for a hearing nor has she taken any action to pursue her claim prior to the hearing date. Moreover, she has made clear to the Commission that she does not want to pursue her claim any further and does not object to a dismissal. Thus, I find that the Respondents have proven by the preponderance of the evidence that its' Motion should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted and this claim is dismissed *without prejudice*.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge