

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H207279**

**BETTY L. HORTON,
EMPLOYEE**

CLAIMANT

**PENSKE TRUCK LEASING CO., LP,
EMPLOYER**

RESPONDENT

**GALLAGHER BASSETT SERVICES, INC.,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED MARCH 31, 2025

Hearing conducted on Wednesday, March 12, 2025, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Betty L. Horton, *Pro Se*, of White Hall, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Melissa Wood, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on March 12, 2025, in Little Rock, Arkansas. Claimant, according to Commission file is *Pro Se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as a hiker/driver. The date for Claimant's alleged injury was on July 30, 2022. She reported her injury to Respondent/Employer on September 26, 2022. Respondents admitted Respondents' Exhibit 1, pleadings and correspondence, consisting of 18 pages, Commission Exhibit 1, correspondence and certified mail receipts, consisting of 8 pages. Also admitted into evidence was a blue-backed Form AR-1, *as discussed infra*.

The record reflects on July 10, 2024, a Form AR-C was filed with the Commission by Claimant's then-attorney, Rainwater, Holt & Sexton, purporting that Claimant injured her right shoulder, left knee, and other whole body. On August 11, 2023, Claimant's attorney filed another Form AR-C that contained no material changes from the original filing. On October 10, 2022, a Form AR-1 was filed with the Commission purporting that Claimant's date of disability was September 26, 2022. On October 12, 2022, a Form AR-2 was filed by Respondents neither accepting nor denying compensability. On August 28, 2023, Carol Worley, entered her appearance as attorney of record for the Respondents. Claimants counsel, Laura Beth York of Rainwater, Holt, and Sexton, filed a Motion to Withdraw as Claimant's Counsel on October 17, 2024. The Commission entered an Order granting that motion on October 30, 2024.

The Respondents filed a Motion to Dismiss on November 12, 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 November 18, 2024, to her last known address. The Claimant responded to the motion by requesting a hearing, in writing, on December 5, 2024. Considering the hearing request, I decided, on December 12, 2024, to hold the motion in abeyance. Pre-hearing questionnaires were sent out December 13, 2024.

On January 8, 2025, Claimant sent an email to the Commission stating that she has decided to drop her claim since she was not able to retain legal counsel. As a result, I reinstituted the Motion to Dismiss and sent out the notice letter certified and regular U.S. Mail on January 13, 2025. The certified motion notice was unclaimed by Claimant as noted on the January 29, 2025, return receipt. The Claimant did not respond to the Motion, 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 February 5, 2025. The certified notice was claimed on February 21, 2025, according to the return receipt dated February 21, 2025. Thus, the hearing took place on March 12, 2025. And as mentioned before, the Claimant did not show up to the hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, 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 Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the March 12, 2025, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute her claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be 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).

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with reasonable notice, on the Respondents' Motion to Dismiss. The certified hearing notice sent to the Claimant's address of record was claimed on February 21, 2025. 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 has not taken any action to prosecute her claim since her counsel of record, Ms. York, withdrew from her case on October 30, 2024. The Claimant followed up this inaction with an email sent on January 8, 2025, stating she has decided to drop her claim since she cannot retain legal counsel. Based on her email, she has no desire to prosecute this claim, and so far, has not. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim. 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 hereby granted, and Claimant's claim is dismissed *without prejudice*.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge