

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
AWCC CLAIM NO. H306893**

**TERRY KEELING,  
EMPLOYEE**

**CLAIMANT**

**WALMART ASSOCIATES INC.,  
SELF INSURED/EMPLOYER/TPA**

**RESPONDENT**

**OPINION FILED AUGUST 15, 2024**

Hearing before Administrative Law Judge Steven Porch on August 6, 2024, in Little Rock, Pulaski County, Arkansas.

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

The Respondents were represented by Mr. Rick Behring Jr., Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss filed by the Respondent on May 22, 2024. The Claimant worked as a team associate for Respondent/Employer. Admitted into evidence is Respondents' Exhibit 1, correspondence and pleadings, consisting of 15 pages. I have also blue-backed postal return receipts dated June 7, 2024, and July 6, 2024, *as discussed infra*.

The record reflects on October 23, 2023, a Form AR-1 was filed alleging Claimant slipped and fell in the bakery and landed on her back. Claimant's injury occurred on August 21, 2023. Claimant reported the injury to Respondent/Employer on August 26, 2023. Respondents filed a Form AR-2, on October 23, 2023, not stating any grounds for controverting the claim. Claimant's then-counsel, Laura Beth York, on November 14, 2023, filed a Form AR-C, purporting that Claimant injured her chest, ribs, right hip, left hip, head, neck, and back. Claimant's counsel next

filed a Motion to Withdraw as Claimant's Counsel on February 29, 2024. The motion was granted on March 20, 2024, by the Full Commission.

The Respondents next filed a Motion to Dismiss on May 22, 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 May 23, 2024, to her last known address of record. The certified notice was not claimed by Claimant per postal receipt dated June 7, 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 June 21, 2024. The certified notice was not claimed by the Claimant per postal receipt dated July 6, 2024. The hearing took place on August 6, 2024, and the Claimant did 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 6, 2024, Motion to Dismiss hearing date.
3. Respondents did not 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. Thus, I find that the Respondents have not 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.**

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STEVEN PORCH  
Administrative Law Judge