

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H203243

FAITH LAWSON,  
EMPLOYEE

CLAIMANT

UNITED PARCEL SERVICE, INC.,  
EMPLOYER

RESPONDENT

LM INSURANCE CORPORATION,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 22, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in Texarkana, Miller County, Arkansas.

The Claimant, unrepresented/pro se, did not appear at the hearing.

The Respondents represented by the Honorable David C. Jones, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on May 14, 2024, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law. No testimony was taken during the dismissal hearing.

The record consists of the transcript of the May 14, 2024, hearing and the documents held there. Admitted into evidence was Commission's Exhibit 1 consisting of eight (8) pages of forms,

pleadings, and correspondence from the Commission’s file on the claim; and Respondents’ Exhibit 1 comprising of pleadings, correspondence, unexecuted authorizations, discovery requests, and various other forms related to this claim, consisting of forty-nine (49) pages.

### **Background**

On June 28, 2023, the Claimant’s former attorney filed with the Commission a claim (AWCC Claim No. H203243) for Arkansas workers’ compensation benefits on behalf of the Claimant by way of a Form AR-C. According to this document, the Claimant provided the following description of her alleged work-related accidental injury: “Claimant was injured during the course and scope of her employment. Claimant sustained injuries to her back neck, head, left ankle, right hand, and other whole body.” Per the Form AR-C, the Claimant requested both initial and additional workers’ compensation benefits. The date of the Claimant’s work-related accident is April 26, 2022.

The respondent-carrier filed a Form AR-2 with the Commission on May 9, 2022, confirming that they were not challenging the claim. On July 12, 2023, the Respondents’ attorney wrote a letter to the Commission advising, among other things, that they had recently been retained by the respondent-carrier to represent them in this proceeding. Counsel for the Respondents said that Respondents accepted this as a compensable claim for the Claimant’s head and right-hand injuries. However, it was their position that all appropriate benefits had been paid to date.

Subsequently, on September 15, 2023, the Claimant’s former attorney sent an e-mail to the Commission to enter her formal appearance on behalf of the Claimant. At that time, counsel also requested a hearing on the merits. Additionally, the Claimant’s former attorney asserted that on January 17, 2023, the Claimant sustained a second work-related injury (AWCC Claim No. H301388), which was to her lower back during and in the course of her employment while

delivering a heavy box. Therefore, the Claimant's former attorney requested a hearing on both claims. However, currently, the only claim before me for dismissal is the first claim, which is AWCC Claim No. H203243, which has an injury date of April 26, 2022.

Previously, the prehearing process was started on both claims. On October 4, 2023, the Respondents' attorney wrote a letter to the Commission saying that the Respondents were asking that the first claim, (AWCC Claim No. H203243) be dismissed because all appropriate benefits have been paid on that claim. Respondents' counsel advised, in relevant part, that approval for the requested back surgery on the second claim/ AWCC Claim No. H301388 should be forthcoming because the EMG studies showed objective medical findings.

On October 5, 2023, the Claimant's attorney sent an email to the Commission confirming that the Respondents had authorized and approved the surgery that had been recommended for the Claimant's back. Therefore, the Claimant's attorney asked for cancelation of the prehearing telephone conference scheduled for October 16, 2023, and that both cases be returned to the Commission's general files. With there being no objection from the Respondents, this was done.

Conversely, on February 20, 2024, the Claimant's attorney filed with the Commission a motion to withdraw from representing the Claimant on both claims. On March 20, 2024, the Full Commission entered an Order granting the motion.

A few days later on March 25, 2024, the Respondents filed a Motion to Dismiss With or Without Prejudice on the above referenced claim (AWCC Claim No. H203243) with an injury date of April 26, 2022. The Respondents served a copy of the foregoing pleading on the Claimant via US Mail. In support of their motion for dismissal, the Respondents specifically noted that there has been no activity on the claim since September 2023.

The Commission sent a letter notice on March 29, 2024, to the Claimant informing her of the Respondents' motion for dismissal of her claim. Said letter was mailed to the Claimant by both first-class and certified mail. Per this correspondence, the Claimant was given a deadline of twenty (20) days for filing a written response to the Respondents' motion to dismiss.

Information received by the Commission from the United States Postal Service shows that they delivered this item to the Claimant on April 5, 2024. The electronic return receipt bears the Claimant's printed name, as well as her signature. Moreover, the letter notice mailed to the Claimant via first-class mail has not been returned to the Commission.

Yet, there has been no response from the Claimant in this regard.

Subsequently, on April 19, 2024, the Commission sent a Notice of Hearing to the parties letting them know that a dismissal hearing had been scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. The hearing notice was sent to the Claimant via certified and first-class mail. Said hearing was scheduled for May 14, 2024, at 10:00 a.m., in Texarkana, Arkansas.

Tracking information received by the Commission from the Postal Service shows that on April 22, 2024, they delivered this item to the Claimant's home. The Claimant signed the receipt for proof of delivery of this item. Similarly, the notice sent to the Claimant via first-class mail has not been returned to the Commission.

Yet, there was no response from the Claimant.

On May 14, 2024, a dismissal hearing was in fact conducted on the Respondents' motion for dismissal of this claim as scheduled. The Claimant did not appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel for the Respondents asserted that the Claimant has failed to promptly prosecute this claim for workers' compensation benefits. The Respondents' attorney argued, among other things, that there has been no attempt on the part of the Claimant to move forward with a hearing on this claim since September of 2023. Therefore, counsel asked that this claim be dismissed due to a failure to prosecute, with or without prejudice, because the Claimant has not requested a hearing within six months after her last request for a hearing. Counsel also said that all appropriate benefits have been paid on this claim. Of note, counsel for the Respondents indicated that the Claimant has another ongoing claim that is not part of this current dismissal action. As previously stated, that second claim was for an injury to the Claimant's back, which occurred on January 17, 2023. That claim is of record with the Commission as AWCC Claim No. H301388.

The evidence before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. In that regard, the Claimant has not requested a hearing since her former attorney requested a hearing on September 12, 2023, which was more than six months ago. Of significance, the Claimant did not appear at the hearing to object to her claim being dismissed, and she has not responded to the notices of this Commission, despite having received delivery of them. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, *without prejudice* to the refile of it within the limitation period specified by law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, 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 of this claim.
2. The Respondents filed with the Commission a motion for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since her former attorney requested a hearing in September of 2023, which was more than six months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits based upon the relevant provisions of the specified statute and Rule of this Commission.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, per Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refileing of it within the limitation period specified by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refileing of it, within the limitation period specified by law.

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**CHANDRA L. BLACK**  
**Administrative Law Judge**