

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H108679**

**PAMELA MURPHY,
EMPLOYEE**

CLAIMANT

**AMERICAN PAPER AND TWINE CO.,
EMPLOYER**

RESPONDENT

**ACCIDENT FUND GENERAL INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 24, 2024

Hearing conducted on Wednesday, June 12, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Pamela Murphy was *Pro Se*, of Greenbrier, Arkansas, and did not appear in person at the hearing.

The Respondents were represented by the Honorable Karen McKinney, Little Rock, Arkansas. Ms. McKinney's law partner Jarrod Parrish argued the motion.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on June 12, 2024, in Little Rock, Arkansas. No testimony was taken in the case.

The Claimant worked for the Respondent/Employer as a driver. Admitted into evidence was Respondent Exhibit 1, Motion to Dismiss with attached exhibits, consisting of nine pages; Respondents Exhibit 2, Pamela Murphy letter dated February 13, 2024, consisting of one page; Respondent Exhibit 3, Preliminary notice, consisting of two pages; Respondents Exhibit 4, Notice of Motion to Dismiss, consisting of two pages; Commission Exhibit 1, correspondence, and certified return receipt, consisting of five pages. I have also blue-backed Form AR-1, Form AR-2,

Form AR-C, email from Claimant and Response from Melanie Miller dated April 16, 2024, *as discussed infra*.

The record reflects on October 28, 2021, a Form AR-1 was filed with the Commission. This form reflects that Claimant allegedly tripped over a dolly and fell out of a truck and possibly broke her wrist. This alleged injury was reported to the Respondent/Employer on the same day. On November 4, 2021, Respondents filed a Form AR-2 with no statement of position as to whether they were accepting or controverting the claim. Claimant on April 15, 2022, filed a Form AR-C, through her then-attorney, Laura Beth York. The Form AR-C further alleged that the injury occurred while Claimant was making a delivery. The form also alleged she sustained injuries to her right arm, right shoulder, left lung, ribs on the left side, left side of stomach, and other whole body. Attorney Karen McKinney entered her appearance on behalf of the Respondents on May 2, 2022.

The Claimant filed for a change of physician on March 27, 2023. There, the Claimant wanted to be transferred from Dr. Brent Walker to Dr. Krishnappa Prasa. This request was granted on April 11, 2023. Claimant's counsel next filed a Motion to Withdraw on October 5, 2023. The motion references several unsuccessful attempts to reach the Claimant regarding the motion. The Full-Commission granted the Motion to Withdraw on October 24, 2023. Respondents' counsel filed a Motion to Dismiss on January 9, 2024. The motion states that the Claimant has not requested a hearing in over six months. A copy of the motion was sent to the Claimant via certified mail on January 25, 2024. On March 1, 2024, Claimant sent correspondence objecting to the Motion to Dismiss and requesting a hearing. The Motion to Dismiss was held in abeyance and Prehearing Questionnaire documents were sent out on March 20, 2024. Claimant's Preliminary Notice was due April 4, 2023, and her Prehearing Questionnaire was due on April 9, 2024. The Claimant was

made aware in an email dated April 10, 2024, that she was past her due date for these documents; and if she does not submit them by noon, April 12, 2024, that I would be moving forward with Respondents' Motion to Dismiss. The Claimant did not complete and submit either document by that deadline.

Therefore, another letter making her aware of the Motion to Dismiss was sent to the Claimant on April 15, 2024. Claimant, in an unexpected email dated April 16, 2024, stated she was in Florida tending to her sick father who died four days after her arrival to the state. She made me aware that she is ready to get back on track. After extending condolences, I agreed to extend her filing time for the prehearing documents to April 30, 2024. In the interim, the notice of the Motion to Dismiss was received by Claimant, via certified U.S. Mail, on April 18, 2024. She did not respond to the notice within twenty days and since then failed to file the overdue prehearing documents.

Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the Motion to Dismiss hearing notice 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 10, 2024. The certified notice was not claimed by the Claimant, but the notice sent regular First-Class Mail did not come back to the Commission. The hearing took place on June 12, 2024.

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 12, 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. The Claimant was given every reasonable opportunity to prosecute her case and has failed to do so. Claimant's actions run counter to AWCC Rule 099.13.

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 requested a hearing and has not satisfied the basic requirements for such a request, i.e. the filing of prehearing documents. Despite granting her more time, on at least two different occasions, to file her prehearing documents, the Claimant has not pushed her Claim forward. Based on the foregoing, I do find the Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute her claim. And as a result, 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 and this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge