

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.:H406857

ALYSSA NEWELL,
EMPLOYEE

CLAIMANT

QMT LLC, QUAPAW BATHS, LLC,
EMPLOYER

RESPONDENT

MARKEL SERVICE, INC.,
CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 19, 2025

Hearing held before Administrative Law Judge CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

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

Respondents represented by the Honorable Randy P. Murphy, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 18, 2025, in the present case to determine whether this claim for initial Arkansas workers' compensation 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. The dismissal hearing in this claim was held pursuant to the ruling in Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004).

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.

The record consists of June 18, 2025, hearing transcript and the documents held therein. Commission's Exhibit consisting of seven (7) pages of pleadings, letters, forms, and other tracking

documents provided to the Commission by the United States Postal Service concerning delivery information for the notices sent to the Claimant; and Respondents' Exhibit 1 includes three (3) pages.

Procedural History

The following procedural history applies to this claim:

Specifically, on October 18, 2024, the Claimant's attorney filed with the Commission a claim for Arkansas workers' compensation benefits via a Form AR-C. Per this document, the Claimant alleged that she sustained injuries during the course and in the scope of her employment with the respondent-employer. According to this document, the Claimant asserted that she sustained an injury to her left knee on October 14, 2024. The Claimant requested only initial additional benefits, in the form of temporary partial disability, medical expenses, rehabilitation, and an attorney's fee.

On February 6, 2025, the respondent-insurance-carrier filed with the Commission a Form AR-2 stating their position on this claim for workers' compensation benefits. Per this document, the Respondents controverted the claim in its entirety. Specifically, the carrier wrote on the Form AR-2 "DENYING in full based on Dr. Vargas' findings of a pre-existing condition."

The Claimant has not requested a hearing on the merits since the filing of the claim via the Form AR-C, on October 18, 2024.

Because there was no activity whatsoever on the claim, the Respondents filed a Motion to Dismiss for Failure to Prosecute, along with a certificate of service confirming that they had mailed a copy of the motion to the Claimant via the United States Postal Service.

On April 24, 2025, my office sent a letter/notice to the Claimant informing her of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. Said letter

was mailed to the Claimant via both first-class and certified mail. Per tracking information received from the United States Postal Service, on May 9, 2025, they were unable to find any delivery information in their records for this item, which was sent via certified mail. Yet, the letter sent via first-class mail was returned to the Commission, on May 27, 2025, marked “Unclaimed, Unable to Forward.”

However, there was no response whatsoever from the Claimant.

Therefore, per a Hearing Notice sent to the parties on May 16, 2025, the Commission notified them that this matter had been set for a hearing on Respondents’ motion for dismissal of this claim due to a lack of prosecution. Said dismissal hearing was scheduled for Wednesday, June 18, 2025, at the Arkansas Workers’ Compensation Commission.

Said notice of hearing was sent to the Claimant by both first-class and certified mail. Per tracking information received from the United States Postal Service, on June 3, 2025, they were unable to find any delivery information in their records for the afore item sent via certified mail. Yet, the letter sent via first-class mail was returned to the Commission, on June 12, 2025, marked “Unclaimed, Unable to Forward.”

Still, there has been no response whatsoever from the Claimant.

Nevertheless, the hearing was held as scheduled. The Claimant did not appear at the hearing. However, the Respondents’ counsel appeared at the hearing and argued that the Claimant has failed to prosecute her claim initial for workers’ compensation benefits. More specifically, the Respondents’ attorney noted that the Claimant has not taken any action to advance her claim since the filing of the Form AR-C, which was done more than six (6) months ago. Therefore, the Respondents’ attorney moved that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702, and/or Commission Rule 099.13 *without prejudice*.

Adjudication

The statutory provision and Arkansas Workers' Compensation Rule applicable in the Respondents' request for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Additionally, Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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. (Effective March 1, 1982)

A thorough review of the evidence before me shows that the Claimant has had ample time to pursue her claim for initial benefits, but she has failed to do so. Specifically, the Claimant has not requested a hearing or otherwise made any effort to prosecute her claim for workers' compensation benefits since the filing of the Form AR-C in August 2023, which was done over more than six (6) months ago. Of significance, the Claimant has failed to oppose the motion, and she has not responded to the notices of this Commission. Under these circumstances, I am persuaded that the Claimant has abandoned her claim for workers' compensation benefits.

Hence, the evidence preponderates that the Claimant has failed to timely prosecute this claim for initial workers' compensation benefits. Accordingly, based on the preponderance of the evidence presented before me, I find that the Respondents' motion to dismiss for a lack of prosecution to be well taken. I thus find that pursuant to the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Commission Rule 099.13, this claim for initial workers' compensation benefits is hereby respectfully dismissed, *without prejudice*, to the refiling within the limitation period specified under the 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. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
4. The Respondents' motion to dismiss this claim for want of prosecution is hereby granted, *without prejudice*, pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of the claim within the specified limitation period.

ORDER

Based upon the foregoing findings, I have no alternative but to dismiss this claim for initial Arkansas workers' compensation benefits. This dismissal is pursuant to Ark. Code Ann. §11-9-702, and Commission Rule 099.13, *without prejudice*, to the refiling of this claim within the

limitation period specified under the Act.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge