

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H402239

HEATHER RENEE ROBBINS,  
EMPLOYEE

CLAIMANT

OUACHITA ENRICHMENT CENTER, INC.,  
EMPLOYER

RESPONDENT

ACCIDENT FUND GENERAL INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 9, 2024

Hearing held before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

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

Respondents represented by the Honorable Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

This matter comes before the Commission pursuant to the Motion to Dismiss filed by the Respondents. A hearing on the motion was conducted on August 7, 2024, in El Dorado, Arkansas. Thus, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the August 7, 2024, hearing transcript and exhibits. In that regard, Commission's Exhibit No. 1 includes two pages, which has been marked; accordingly, and Respondents' Exhibit 1 consisting of thirty-one numbered pages was marked as thus so.

No testimony was taken at the hearing.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by applicable law.

### **Background**

The record reflects the following procedural history:

The Respondents initially accepted this as a medical-only claim. This claim involves a slip and fall injury that the Claimant sustained on the premises of the respondent-employer on November 21, 2023. The Claimant's work-related incident occurred reportedly while the Claimant was on the premises during her lunch break. While the Claimant was continuing to undergo further medical treatment, an investigation by the Respondents revealed that the Claimant's injury occurred at a time when the Claimant was not performing employment services. As a result of the findings of this investigation, the Respondents controverted the claim.

Once the claim was controverted, the Claimant sent a written request to the Commission on April 11, 2024, asking for a hearing on the issue of additional benefits. Although the Claimant did not file a Form AR-C, this letter constitutes the filing of a claim for additional workers' compensation benefits under the Arkansas Workers' Compensation Act.

Therefore, the prehearing process began, and the claim was assigned to my office for adjudication. On May 10, 2024, prehearing questionnaires and notices were forwarded to the parties. The Claimant's responsive filing was due on May 30, 2024. When the Claimant failed to file a timely response, this claim was returned to the Commission's general files. However, on June 4, 2024, the Claimant sent in a prehearing questionnaire response to the Commission. At that point, the Respondents prepared their prehearing questionnaire response and also filed a Motion to Compel Discovery.

The Respondents were prompted to take this course of action because they had previously propounded discovery to the Claimant, and she provided them with only partial answers. Per the Respondents, the Claimant did not provide any records supporting her claim and she did not

provide any of the releases they had asked her for. After the Claimant failed to respond to the motion, a Motion to Compel was entered.

Still, the Claimant failed to pursue her claim for additional workers' compensation benefits. As a result, the Respondents essentially moved that the claim be dismissed.

On June 20, 2024, my office wrote to the Claimant and requested a response to the motion within twenty days. The letter was sent by first-class and certified mail to the address listed by the Claimant with the Commission. The first-class letter was not returned to the Commission.

However, on July 24, 2024, the Claimant sent an email to the Commission which simply read, "*Please dismiss my case.*"

On that same date, a dismissal hearing notice was sent to the parties scheduling the hearing for August 7, 2027, at 8:30 a.m. at the Union County Courthouse in El Dorado. Said notice was sent to Claimant by first-class and certified mail at the same address as before. The first-class letter was not returned. Thus, the evidence preponderates that the Claimant received proper notice of the dismissal hearing.

A hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant chose not to appear at the hearing.

The Respondents appeared through counsel at the hearing and argued for dismissal of this cause of action under the authority of Commission Rule 099.13

Specifically, the Respondents' attorney requested that the claim be dismissed *without prejudice* under Commission Rule 099.13. The Respondents noted that the Claimant has consented in the dismissal of her claim via her correspondence to my office on July 24, 2024.

**Discussion**

In that regard, AWCC 099.13 reads:

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.

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of this matter—by a preponderance of the evidence. This standard 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).

With respect to the evidence recounted above, (1) the parties were provided reasonable notice of the Motion to Dismiss and the hearing on it; and (2) the Claimant has failed to pursue her claim because she has taken no further action in pursuit of it (including not appearing at the August 7, 2024 dismissal hearing to argue against her claim being dismissed) since the filing of her claim for additional benefits on April 11, 2024. Moreover, the Claimant has stated that she does not wish to pursue her claim and has agreed for it to be dismissed.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is called for under the provisions of Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

Because of the abovementioned finding, it is unnecessary to address the application of Ark. Code Ann. §11-9-702.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the 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 of this claim.
2. Reasonable notice of the Motion to Dismiss and hearing was had on all the parties.
3. The evidence preponderates that the Respondents' motion for dismissal for a lack of prosecution is well founded.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Rule 099.13 *without prejudice*, to the refiling of the claim within the specified limitation period.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Rule 099.13 to the refiling of it within the specified limitation period.

**IT IS SO ORDERED.**

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