

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE No H100782**

<b>SUSAN Y. WEBB, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ARKANSAS DEMOCRAT-GAZETTE, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMERICAN ZURICH INS. CO./ GALLAGHER BASSETT SERVICES, INC., CARRIER/TPA</b>	<b>RESPONDENT</b>

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**OPINION FILED 28 MARCH 2024**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe, 27 March 2024, in Little Rock, Pulaski County, Arkansas.

The *pro se* claimant did not appear.

Mr. Rick Behring, Jr., Attorney-at-Law of Little Rock, appeared for the respondents.

**STATEMENT OF THE CASE**

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 27 March 2024. This case relates to a workplace injury sustained on 21 October 2019, when she was delivering materials for her employer and an elevator door hit her right shoulder and upper arm. A First Report of Injury and a Form AR-2 were filed on 2 February 2021 accepting the claim. On 28 July 2021, the claimant filed a Form AR-C seeking various benefits.

On 12 April 2022, the respondents filed their initial Motion to Dismiss for failure to prosecute the claim. The claimant communicated her objection to a dismissal, and, by way of a letter dated 3 May 2022, the Commission held that motion in abeyance, anticipating a hearing on the matter. After holding a prehearing telephone conference, the matter was returned to the Commission's General Files, as evidenced by the Commission's letter dated 27 July 2022.

The respondents renewed their Motion to Dismiss for failure to prosecute on 29 February 2024. In that Motion, the respondents indicated that the claimant sought, gained authorization for, and successfully recovered from a surgery related to the work injury. They further stated that the claimant had not sought a hearing on any matter at controversy in the six (6) months preceding that filing. In an email to the Commission dated 7 March 2024, the claimant noted that her surgery was a success, that she was not experiencing any injury-related pain, and that she did not object to the dismissal.

The respondents appeared on 27 March 2024, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the file reflects no request for a hearing on a claim in the relevant time preceding the filing of that motion. The most recent activity from the claimant, instead, being her relaying good news about her surgery and her being agreeable to this matter's dismissal.

Arkansas Code Annotated §11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 099.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents' counsel, I find that the respondents' Motion to Dismiss should be granted and that the matter should be dismissed without prejudice.

**ORDER**

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE