

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205431**

**SARAH LOGE,
EMPLOYEE**

CLAIMANT

**DOLLAR GENERAL STORE,
EMPLOYER**

RESPONDENT

**DOLGENCORP, LLC, d/b/a DOLLAR GENERAL/
SEDGWICK CLAIMS MG'T, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER FILED OCTOBER 18, 2023,
GRANTING RESPONDENTS' MOTION TO DISMISS WITH PREJUDICE**

Hearing conducted on Tuesday, October 17, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Sarah Loge, pro se, of Conway, Faulkner County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable David C. Jones, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, October 17, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Repl.).

The respondents filed a motion to dismiss and brief in support thereof with the Commission on August 7, 2023, requesting this claim be dismissed either with or without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at his addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested. Thereafter, the claimant never responded to the subject motion to dismiss, nor

did she request a hearing, or contact and/or try to contact the Commission by any means of communication. The last time the claimant corresponded with the Commission was by a type-written letter dated August 17, 2022, some 14 months ago, wherein she requested to “appeal’ the respondents’ denial of her claim, and she requested a hearing. (Respondents’ Exhibit 1, and Comms’n’s file). However, thereafter, the claimant never made any effort whatsoever to pursue and/or prosecute her claim. Moreover, she failed and/or refused to cooperate in the discovery process or to provide the respondents’ attorney with responses to the respondents’ interrogatories and requests for production of documents, and she failed and/or refused to provide the respondents a signed medical release.

The record herein consists of the hearing transcript and any and all exhibits contained therein and/or attached thereto, as well as the Commission’s entire file in this matter.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals’ ruling in *Dillard vs. Benton County Sheriff’s Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents’ motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively reveals the claimant has failed and/or refused to prosecute her claim as required by the applicable statute and Commission rule. Moreover, and significantly, since the alleged date of injury of August 4, 2021, the respondents controverted this claim in its entirety and never paid any medical and/or indemnity benefits. Consequently, the applicable statute of limitations (S/L) expired on August 4, 2023, and therefore, the plain language of the Arkansas Workers’ Compensation Act (the Act) compels me to dismiss this claim with prejudice. The ALJ also notes the respondents’ well-reasoned and well-written

motion to dismiss and brief in support thereof filed with the Commission on August 7, 2023 – as well as the preponderance of the evidence of record conclusively demonstrating that more than two (2) years have passed since the alleged injury date of August 4, 2021, and the claimant has not received any medical and/or indemnity and/or any other benefits, and certainly has not received any benefits whatsoever within the last one (1) year – sets forth more than sufficient facts and legal precedent to warrant a dismissal with prejudice in this particular claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having received due and legal notice of the respondents’ motion to dismiss, as well as due and legal notice of the subject hearing, the claimant failed and/or refused to respond to the motion in any way whatsoever, and she failed and/or refused to appear at the subject hearing. Therefore, she has waived her right to a hearing on the respondents’ motion to dismiss.
3. Moreover, the claimant has failed to prosecute her claim in any way whatsoever, and has to date failed and/or refused to cooperate in the discovery process, including but not limited to failing and/or refusing to respond to the respondents’ routine and reasonable interrogatories and requests for production of documents, and she has failed and/or refused to provide the respondents’ a signed medical authorization.
4. Therefore, since the alleged date of injury is August 4, 2021; and the respondents denied this claim in its entirety and have not paid any medical and/or indemnity benefits; as well as for all the reasons set forth above in the “Discussion” section of this opinion and order, and the respondents’ motion to dismiss with or without prejudice and brief in support thereof, the Act compels me to GRANT the respondents’ motion to dismiss filed with the Commission on August 7, 2023, *with prejudice* based on the specific facts and applicable law, pursuant to both *Ark. Code Ann.* Section 11-9-702(a)(4) and Commission Rule 099.13.

Of course, the claimant may appeal the decision set forth in this opinion and order within the applicable deadline. The ALJ strongly encourages the claimant to retain the services of an attorney should she wish to do so.

The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp