

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G905243**

**LINZY ALLISON,  
EMPLOYEE**

**CLAIMANT**

**KUM & GO, LLC  
EMPLOYER**

**RESPONDENT**

**ZURICH AMERICAN INS. CO./  
ZURICH INS. CO.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE FILED JULY 28, 2021**

Hearing conducted on Wednesday, July 28, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Linzy Allison, Ward, Lonoke County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by Mr. Zachary Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Wednesday, July 28, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Replacement). The respondents filed a motion to dismiss with the Commission on June 16, 2021, requesting this claim be dismissed for lack of prosecution. The claimant was mailed a copy of the respondents' motion to dismiss, as well as a copy of the hearing notice, via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested to her last known address of record in advance of the hearing in accordance with applicable Arkansas law. Thereafter, the claimant failed and/or refused to respond to the respondents' motion in any way. She also failed and/or refused to appear at the scheduled

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hearing. The respondents' counsel advised the parties had tentatively settled this claim, and were prepared to present the joint petition it to the Commission for approval by interrogatories. However, the claimant never returned the joint petition settlement documents, and has neither contacted the respondents' attorney, or been accessible or available to him. Her whereabouts apparently are unknown.

The record herein consists of the hearing transcript and any and all exhibits contained therein and 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.

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. The claimant failed and/or refused to either respond to the respondents' motion to dismiss, and she failed and/or refused to appear at the scheduled hearing. Therefore, the claimant is deemed to have waived her right to a hearing.
3. The claimant has failed and/or refused to prosecute her claim. Moreover, the claimant has failed and/or refused to request a hearing in the last six (6) months.
4. Therefore, this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a)(4), and Commission Rule 099.13.

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This Order shall not be construed to prohibit the claimant, any attorney she may retain in the future, or anyone acting legally and on her behalf, from refileing the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents are ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp