

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G800251

LINA AVILA, Employee	CLAIMANT
TYSON POULTRY, INC., Employer	RESPONDENT
TYNET, Carrier/TPA	RESPONDENT

OPINION/ORDER FILED JUNE 9, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

OPINION/ORDER

This case comes on for review following a hearing on respondents' Motion to Dismiss.

On June 24, 2020, claimant's attorney filed a Form AR-C with the Commission alleging an injury date on or about August 31, 2017. However, since the filing of the Form AR-C, no hearing has been requested by the claimant. On December 28, 2020, respondent filed a Motion to Dismiss requesting that this claim be dismissed for lack of prosecution. A hearing was set on that motion for March 16, 2021, but was continued at the request of claimant's attorney in that she had received a telephone call from the claimant in regard to her claim, but failed to leave her number to allow for a return call from Ms. Brooks. Ms. Brooks requested additional time to send another letter to the claimant concerning the respondent's motion, and the Motion to Dismiss hearing was reset for April 13, 2021 by way of letter dated March 5, 2021.

Counsel for both claimant and respondent appeared at the April 13, 2021 Motion to Dismiss hearing, but claimant did not appear. Mr. Zuerker stated that the claimant sustained a compensable injury on or about August 31, 2017, and claimant filed a Form AR-C on June 24, 2020. Claimant was given a 5% impairment rating on July 17, 2018, and some additional work hardening which was concluded in June of 2019. Claimant filed for a change of physician on August 18, 2020, which was

controverted by the respondent contending that the statute of limitations had run. Respondent attempted to schedule claimant's deposition over the course of several months, and when that was unsuccessful the respondent filed its Motion to Dismiss on December 28, 2020. Ms. Brooks noted her objection to the dismissal of this claim, and requested an additional period of time in which to attempt to reach the claimant once again concerning the respondent's motion. While claimant did attempt to call Ms. Brooks' office, she failed to leave a contact number as to where she could be reached.

This matter was taken under advisement, and Ms. Brooks was given an additional 30 days, or until May 14, 2021, in which to contact her claimant and to advise the Commission as to whether she wished to move forward with her claim. By e-mail dated May 19, 2021, Ms. Brooks indicated as follows: "I have not heard from my client despite my best efforts. While I do not join in Mr. Zuerker's motion to dismiss, I will not object."

After my review of respondent's Motion to Dismiss, as well as Ms. Brooks' e-mail dated May 19, 2021, and all other matters properly before the Commission, I find that respondent's Motion to Dismiss this claim should be and hereby is granted pursuant to Commission Rule 099.13. This dismissal is without prejudice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE