

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H006189**

**KAREN L. BAILEY,
EMPLOYEE**

CLAIMANT

**FORDYCE SCHOOL DIST.,
EMPLOYER**

RESPONDENT

**ARK. SCHOOL BOARDS ASS'N
WORKERS' COMPENSATION TRUST,
ARK. SCHOOL BOARDS ASS'N,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER FILED OCTOBER 18, 2023,
GRANTING RESPONDENTS' MOTION TO DISMISS WITHOUT 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 was represented by the Honorable Tiffany Parker Nutt, of Fordyce, Dallas County, Arkansas, who waived her appearance at the hearing.

The respondents were represented by the Honorable Guy Alton Wade, Friday, Eldredge & Clark, 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 letter motion to dismiss with the Commission on August 28, 2023, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the ALJ's office mailed both the claimant and her attorney due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at her addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt requested. Thereafter, the claimant's attorney sent an email to the respondents' attorney

dated October 3, 2023, advising on her client's behalf that she had no objection to the ALJ granting the respondents' motion to dismiss, and further advising she was waiving appearance at the subject hearing. (Respondents' Exhibit 1, Comms'n's file).

A hearing was held on February 2, 2022, concerning whether the claimant's lumbar spine condition was compensable, and whether she was entitled to surgery at the respondents' expense. The respondents asserted a valiant "employment services" defense; however, though a close case based on the particular facts of this claim, the ALJ rendered a decision in the claimant's favor. The respondents did not appeal the ALJ's decision, and paid for the claimant's lumbar spine surgery. The claimant eventually returned to her teaching job on campus, as opposed to her work teaching her students via television which she had done soon after her work injury, which injury occurred had occurred during the COVID-19 pandemic which necessitated remote teaching and learning. The claimant has not pursued any additional claim for benefits since the hearing and her lumbar spine surgery and the recovery period that followed it.

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 not had a need to further 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. 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's attorney advised on the claimant's behalf she had no objection to the ALJ dismissing the claim without prejudice at this time, and she waived her appearance at the subject hearing.
3. Moreover, the claimant has not felt the need to pursue her claim further after her lumbar spine surgery, and to date she has not requested a hearing on any issue(s).
4. Therefore, the respondents' letter motion to dismiss without prejudice filed with the Commission on August 28, 2023, should be and hereby is GRANTED pursuant to both *Ark. Code Ann.* Section 11-9-702(a)(4) and Commission Rule 099.13.

Nothing in this opinion and order shall be construed to prevent the claimant, her current attorney of record, or any other attorney she may hire to represent her, or any person acting with her permission and on her behalf from refiling this claim, *if* the claim is refiled within the deadlines set forth in *Ark. Code Ann.* Section 11-9-402.

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