

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205230**

**SAMANTHA R. BALLARD,
EMPLOYEE**

CLAIMANT

**UNITED PARCEL SERVICE (UPS), INC.,
EMPLOYER**

RESPONDENT

**LIBERTY MUTUAL INS. CORP./
LIBERTY MUTUAL GROUP
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER FILED MAY 2, 2024, DENYING RESPONDENTS' MOTION
TO DISMISS WITH OR WITHOUT PREJUDICE**

AND

**ORDER FILED MAY 2, 2024, AMENDING MARCH 12, 2024, ORDER TO COMPEL
DISCOVERY TO EXTEND THE DEADLINE BY WHICH THE CLAIMANT SHALL
RESPOND TO THE RESPONDENTS' OUTSTANDING DISCOVERY REQUESTS**

Hearing conducted on Tuesday, April 30, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Samantha R. Ballard, pro se, Bradford, White County, Arkansas, appeared 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, April 30, 2024, to determine whether this claim should be dismissed without prejudice for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement) and Commission Rule 099.13 (2024 Lexis Replacement), and/or with prejudice for the claimant's alleged unjustified refusal to respond to the respondents' outstanding discovery requests. The record herein consists of the reporter's hearing transcript, as well as any and all exhibits contained therein and attached thereto.

As even a cursory review of the record clearly reveals, this claim has been the subject of some confusion as to exactly when the claimant may or may not have been represented by counsel; some apparent “good faith” miscommunication between the claimant and a couple of attorneys with whom she had visited about representing her in this claim; as well as multiple MTDs and, finally, some degree of apparent, understandable misunderstanding on the pro se claimant’s part concerning responding to the respondents’ routine, fair, and reasonable discovery requests, which they had propounded at least as early as on or about August 17, 2022. The alleged date of injury is June 8, 2022. (*See* generally, Respondents’ Exhibit 1; *see*, more specifically, RX1 at 13-22; 25-61).

The respondents filed their initial thorough, well-written MTD and brief in support thereof with the Commission on July 13, 2023, requesting this claim be dismissed without prejudice for lack of prosecution (RX1 at 25-38). At that time because of the ongoing issues concerning discovery and related matters, the ALJ did not schedule a hearing on the respondents’ initial MTD, but held a decision on it in abeyance to provide the parties’ time to clarify and/or resolve the aforementioned outstanding issues. The ALJ returned the file back to the Commission’s open General Files (RX1).

On or about February 14, 2024, the respondents filed a renewed MTD without prejudice, motion to compel discovery, and brief in support of both motions. (RX1 at 43-58). After having given the parties additional time to respond to one another’s legal and factual arguments, the ALJ signed and filed an order to compel discovery signed March 12, 2024. (RX1 at 59-61; 62-65). By that time it had become apparent the pro se claimant had not – at least as of that time period – taken the appropriate steps to formally and legally retain her attorney, the Honorable Gary Davis, of the Davis Law Firm, in Little Rock, Pulaski County, Arkansas. Much to his credit, Attorney

Davis had been diligently attempting to contact the claimant for some time despite the fact he did not formally represent her. Attorney Davis explained during the course of a prehearing teleconference the claimant failed and/or refused to respond to any and all of his attempts to communicate with her. Of course, the respondents had been forwarding any and all of their communications, discovery requests, and other relevant documents to the claimant at her last known address on record with the Commission, as well as sending “courtesy copies” of any and all such documents to Attorney Davis. (RX1).

Following the respondents’ attorneys’ renewed request for a hearing on his MTD, a hearing was scheduled on the respondents’ renewed motion and any and all related issues related thereto, which hearing was held on Tuesday, April 30, 2024. The Commission mailed the hearing notice to the claimant pursuant to the applicable Arkansas law, which she received on April 8, 2024. (Commission Exhibit 1).

The Tuesday, April 30, 2024, hearing was scheduled to begin at 11 a.m.; however, as is the ALJ’s standard practice he waited a period of time after the scheduled time to ensure the claimant had plenty of time to appear at the hearing. At approximately 11:13 a.m., the claimant did in fact appear at the hearing. She apologized for being late, explaining she had some difficulty locating the Commission offices. The ALJ provided the claimant and the respondents’ attorney an additional period of time to visit prior to hearing arguments and taking testimony at the hearing. (Hearing Transcript).

Thereafter, at approximately 11:35 a.m., the hearing commenced on the record; the ALJ administered the oath to the claimant; the respondents’ attorney presented his MTD, requesting that the claim be dismissed with or without prejudice for the reasons stated in his motion and brief in support thereof, or that the ALJ hold a ruling on the motion in abeyance pending the claimant’s

full compliance with the respondents' discovery requests, and as ordered in the ALJ's aforementioned order to compel discovery. The respondents' attorney further explained his reasons and rationale for these requests in his oral presentation of the MTD and related matters. The respondents' attorney further requested that since the claimant still had not complied with the ALJ's order to compel, regardless of what decision the ALJ made on the respondents' MTD, the ALJ should amend his prior order to compel, and ensure the claimant's compliance with the order by a date certain. (Hearing Transcript).

The claimant apologized for her lack of understanding of the process. She testified it was her understanding she was represented by counsel, but readily and honestly conceded she may have been mistaken in this regard. She testified she believed she had signed and dated a medical records release and provided it to Attorney Davis's office, but she was not totally sure about this. The claimant also testified she believed she had provided all relevant medical records to Attorney Davis's office but, again, she freely and candidly admitted she could not be certain about this. The claimant testified she had not yet answered the respondents' written discovery requests/interrogatories because she had some work-related questions and concerns for which she wanted/needed legal advice, and she did not really understand all of the questions, how to respond to them, etc. (Hearing Transcript).

At the conclusion of the hearing the claimant testified she would like to speak to one of the Commission's legal advisors immediately following the hearing. (She did so immediately after the hearing). She also testified she wanted to and intended to retain Attorney Gary Davis as her counsel in this matter, and that she intended to meet with him in person at his office immediately following her meeting with a Commission legal advisor. (Hearing Transcript). (Later in the day following the April 30, 2024, hearing, Mr. Davis advised both the ALJ and the respondents' attorney via

email that he had in fact agreed to represent the claimant; he formally entered his appearance in the claim; and he made a hearing request on specific issues.)

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Repl.), 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' renewed MTD with or without prejudice, as well as his oral request at the hearing that the ALJ amend the order to compel discovery in order to ensure the claimant's timely compliance therewith.

Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing, contained in the record, and known to the ALJ reveals the claimant has now hired an attorney and requested a hearing on specific issues.

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 pro se claimant appeared personally at the hearing, and provided reasonable, credible responses to both the respondents' attorney's and the ALJ's questions. She explained why and sincerely apologized for having been unresponsive to both the respondents and the Commission concerning her claim which, in essence, she attributed to her confusion as to whether she was in fact represented by counsel, and her lack of a total understanding of the workers' compensation process, and the protections for claimants who file claims.
3. In addition, the claimant expressed the desire to prosecute her claim; has retained an attorney to assist her in doing so; and her attorney has requested a hearing on specific issues. Therefore, the respondents' renewed MTD without or with prejudice hereby is denied and dismissed.

4. Despite respondents' counsel's diligence, persistence, and patience, the claimant has to date failed and/or refused to timely respond to the respondents' routine, reasonable discovery requests. Moreover, while the claimant has credibly explained to the ALJ's satisfaction her subjective reasons therefore, still, she has to date failed and/or refused to comply with the Commission's order to compel discovery filed March 12, 2024.
5. Therefore, I herein incorporate by reference the ALJ's March 12, 2024, order to compel discovery as set forth word-for-word herein. (Please find attached as "Exhibit A" to this opinion and order a file-marked copy of the previously executed and filed March 12, 2024, order to compel discovery.)
6. The immediately aforementioned and attached order to compel discovery hereby is amended *only* to the extent the claimant has 30 days from the date of the filing of this opinion – or until Monday, June 3, 2024 – to provide the respondents' attorney with a signed medical release, as well as her full and complete responses to the respondents' previously propounded interrogatories and requests for production of documents. Failure to do so may result in sanctions and/or any and all other appropriate relief to which the respondents' may be entitled pursuant to the Arkansas Workers' Compensation Act (the Act).
7. As always, both parties shall cooperate with one another in both the discovery and hearing process in accordance with all applicable Arkansas laws, rules, and regulations.
8. The respondents shall pay the court reporter's invoice within twenty (20) days of their receipt hereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp