

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H301142

EDEN BALLEW, EMPLOYEE	CLAIMANT
NATURAL RELIEF DISPENSARY, EMPLOYER	RESPONDENT
BENCHMARK INSURANCE COMPANY, INSURANCE COMPANY	RESPONDENT
GRAND RIVER SERVICES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED OCTOBER 4, 2023

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

The Claimant, *pro se*, did not attend the hearing.

Respondents represented by the Honorable Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on September 20, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the above-referenced case should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was provided to all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the September 20, 2023, hearing and the documents retained therein. The entire Commission's file was also made a part of the record. It is hereby

incorporated into the hearing transcript by reference. Moreover, the Respondents offered one exhibit into evidence, consisting of five pages. It has been marked as Respondents' Exhibit 1.

### **Procedural History**

On February 20, 2023, the Claimant filed with the Commission a claim for Arkansas workers' compensation benefits by way of a Form AR-C. The Claimant asserted that she sustained compensable injuries on January 14, 2022, while performing her employment duties for the respondent-employer. She asked for both initial and additional workers' compensation benefits. In fact, the Claimant checked all the boxes for every benefit allowed under the law in connection with this claim. Per the Form AR-C, the Claimant's accidental injury occurred as follows: "After fainting and losing consciousness at work, I was transported to a local hospital ER for medical attention to be examined for injury. I received a diagnosis of syncope and received medications for it."

The claims adjuster filed a Form AR-2 with the Commission on February 28, 2023. At that time, the carrier denied the claim. Per this document, the adjuster's statement of position for controverting the claim included the following grounds: "Claim has been denied. The Claimant was standing at a meeting when she passed out due to an idiopathic condition. She was caught by another employee and lowered to the ground."

Subsequently, there was no action taken by the Claimant to resolve her claim, and nor did she request a hearing.

Therefore, the Respondents filed a Respondents' Motion to Dismiss with the Commission on August 1, 2023. The Respondents' motion for dismissal included a certificate of service confirming that they provided a copy of the above pleading to the Claimant by mailing a copy of it to her.

On August 2, 2023, the Commission sent a letter-notice to the Claimant's last known address via first-class and certified mail. Per this correspondence, the Commission gave the Claimant a deadline of twenty days, for filing a written response to the Respondents' motion.

There was no response from the Claimant. However, information received from the United States Postal Service shows that the notice was delivered to the Claimant's residence and left with an individual on August 4, 2023. The return receipt bears the Claimant's signature.

Yet, there was no response from the Claimant.

Therefore, pursuant to a Notice of Hearing mailed on August 22, 2023, the Commission notified the parties that a hearing had been scheduled in this matter to address the Respondents' motion for dismissal of this claim for failure to prosecute it. The notice was mailed to the Claimant via first-class and certified mail. Said hearing was scheduled for September 20, 2023, at the Commission in Little Rock.

The hearing notice that the Commission sent to the Claimant via first-class mail has not been returned to the Commission. However, the copy of the notice sent via certified mail was returned to the Commission marked "Return to Sender 'Unclaimed' Unable to Forward." Based on the foregoing, I am convinced the Claimant received proper notice of the dismissal hearing.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal of this claim due to a lack of prosecution as scheduled. Yet, the Claimant did not attend the hearing. However, the Respondents appeared through their attorney.

The Respondents' attorney noted that it has been more than six months since the filing of the Form AR-C, but the Claimant has not requested a hearing. Therefore, counsel essentially moved that pursuant to Ark. Code Ann. §11-9-702 and/or Rule 099.13 the claim be dismissed without prejudice for failure to prosecute it.

### **Discussion**

The Claimant has not requested a hearing since the filing of the Form AR-C in February 2023. Hence, more than six months have passed since the filing of this claim for compensation and no bona fide request for a hearing has been made with respect to it. The record before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. More importantly, the Claimant did not appear at the hearing to object to her claim being dismissed. Hence, the evidence before me preponderates that the Claimant has abandoned her claim for workers' compensation benefits.

Therefore, pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, I find that this claim should be and is hereby respectfully dismissed, *without prejudice*, to the refiling of it within the limitation period specified by law.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Respondents filed with the Commission a motion for dismissal of this claim due to a lack of prosecution of it by the Claimant, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of her Form AR-C in February 2023, which was more than six months ago. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits.
4. Appropriate notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion for dismissal of this claim for failure to prosecute it is hereby granted, *without prejudice*, per Arkansas Code Ann. §11-9-702

and Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

Following the findings of fact and conclusions of law set forth above, this claim is hereby dismissed per Arkansas Code Ann. §11-9-702 and Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

**IT IS SO ORDERED.**

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**HON. CHANDRA L. BLACK**  
**Administrative Law Judge**