

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE No H401912**

PATIENCE BRAGG, EMPLOYEE	CLAIMANT
UNITED PARCEL SERVICE, INC., EMPLOYER	RESPONDENT
LM INSURANCE CORP./LIBERTY MUTUAL GROUP, CARRIER/TPA	RESPONDENT

OPINION FILED 27 February 2025

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 26 February 2025 in Little Rock, Arkansas.

The *pro se* claimant did not appear.

Newkirk & Jones, Mr. David Jones, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 26 February 2025. This case relates to an alleged workplace injury sustained on or about 28 February 2024.

A First Report of Injury was filed on 18 March 2024, indicating an injury to the claimant's hand. The respondents subsequently filed a Form AR-2 denying the claim. They indicated that the claimed injury did not appear to be new or distinct from a previously claimed injury. An amended Form AR-2 was filed on 27 March 2024 that reaffirmed the respondents' denial of liability for a new injury. The respondents note that the claimant previously prosecuted an accepted claim (H109846) for a wrist injury.

On 25 March 2024, the Commission received the claimant's request for a hearing on the denial of this claim. Then, on 21 April 2024, the claimant sent an email to the adjuster assigned to her claim stating, "As of today I will not be moving forward with this [matter]."

The respondents forwarded that notice to the Commission the following day. Then, on 27 April 2024, the respondents sought confirmation from the claimant on her notice of intent to drop her claim. She did not respond to that request, so they provided discovery requests to the claimant on 1 May 2024. The claimant did not provide any response(s) to those requests.

On 6 May 2024, my office sent a letter to the claimant advising that, consistent with her expressed intent, the claim file was being returned to the Clerk's office. That letter directed that any request for further action should be directed to the Clerk of the Commission. The file does not indicate any such communication from the claimant.

The respondents eventually moved for a dismissal for lack of prosecution on 10 December 2024, citing ACA §§ 11-9-702(a)(4), (d) and Commission Rule 099.13. Therein, they argued that more than six months had passed since the request for a hearing and the notice of the claimant withdrawing her request for a hearing. They also argued that the claimant did not respond to their discovery requests sent around the time of her request to withdraw the hearing request.

Notice of the respondents' motion was sent to the claimant, consistent with AWCC practices, via First Class Mail and Certified Mail, on 11 December 2024. After no response or objection was received by the Commission, a notice of a hearing on that motion was sent in the same fashion on 22 January 2025. When mailings are returned to the AWCC as not accepted or undeliverable, those mailings are appended to the claim's file. This file contains a return of only the certified letter from 11 December 2024.

The respondents appeared on 26 February 2025, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the file reflects no bona fide request for a hearing on an issue ripe for litigation in this claim in the relevant time preceding the filing of their motion. The claimant did not appear to resist the

dismissal of his claim, which is consistent with her notice of intent to abandon this claim. The respondents offered a number of documents into the record which, collectively, were admitted as Respondents' Exhibit No 1. The exhibit included fifty-six (56) pages of records. Contained therein are correspondence and filings from this claim and records from her previous, accepted claim.

Ark. Code Ann. § 11-9-702(a)(4) states that a matter may be dismissed without prejudice after six months without a bona fide request for a hearing. Our Rule 99.13 provides for a dismissal for failure to prosecute an action upon application by either party. Based on the record, the available evidence, and the arguments of the respondents' counsel; I find (1) that the parties were provided with reasonable notice of the respondents' Motion to Dismiss and the hearing, (2) that the respondents' Motion to Dismiss should be granted, and (3) that this matter should be dismissed without prejudice.

ORDER

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE