

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G401064**

<b>MARY E. BUTLER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CONWAY HUMAN DEVELOPMENT CENTER, EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA</b>	<b>RESPONDENT #1</b>
<b>DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED JANUARY 19, 2022**

**Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Pulaski County, Arkansas.**

**Claimant is deceased and represented by Eddie Walker, Attorney at Law, Fort Smith, Arkansas.**

**Respondents are represented by Robert H. Montgomery, Attorney at Law, Little Rock, Arkansas.**

**The Death & Permanent Total Disability Trust Fund is represented by David L. Pake, Attorney at Law, Little Rock, Arkansas.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on January 11, 2022, in Little Rock, Arkansas, on Respondents' Motion to Dismiss for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant was deceased and represented by Eddie H. Walker, who waived his right of appearance. Mr. Walker notified the Commission that he provided Mr. Butler, the survivor of the claimant, with a copy of a letter which provided that "if he has some reason to object to the dismissal of this case he should let me know immediately." The letter

further provided that he was not aware of any reason to object to the dismissal and requested that he be excused from attending the hearing on the Motion to Dismiss.

The claimant was employed by the respondents Arkansas Human Development Center - Conway, Arkansas, on January 27, 2014, when she sustained injuries to her back, which were investigated and accepted as compensable. A full hearing was held on November 6, 2017, to determine whether a stroke and heart attack were related to her compensable back injury and whether the claimant was entitled to permanent and total disability. An Opinion was filed on January 5, 2018, which awarded the claimant additional benefits. Later, on March 13, 2018, an Order was entered which approved the claimant's attorney request for a lump sum attorney fee for legal services. The claimant died on June 11, 2018, and the respondents filed a Form AR - D on January 22, 2019, and a Form AR- 4 on April 8, 2019. There has been no request for a hearing involving this claim since the date of the hearing on November 6, 2017.

An appropriate notice setting this matter for a hearing for a Motion to Dismiss was provided to the claimant's representative. A hearing was set for January 11, 2022, in regard to the Motion to Dismiss. The claimant's representative submitted the above mentioned letter to the Commission and requested that he not be required to attend the hearing in Little Rock, Arkansas. At the time of the hearing, Robert H. Montgomery appeared on behalf of the Respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the Respondents, there is no alternative but to find that this matter should be dismissed for

failure to prosecute pursuant to A.C.A. 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

**ORDER**

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

**IT IS SO ORDERED.**

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**JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE**