

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H402560**

MARCUS CALAHAM (DEC'D),  
EMPLOYEE

CLAIMANT

AMERICAN RHEINMETALL MUNITION, INC.,  
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INS. CORP.,  
CARRIER/TPA

RESPONDENT

**OPINION FILED MARCH 14, 2025**

A dismissal hearing was held before Administrative Law Judge Chandra L. Black, in El Dorado, Union County, Arkansas.

Claimant, unrepresented/pro se, failed to appear at the hearing.

Respondents represented by the Honorable Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on March 5, 2025, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13.

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

No testimony was taken.

The record consists of the transcript of the March 5, 2025, dismissal hearing and the documents held therein. Specifically, included in the record is Commission's Exhibit No. 1

consisting of eight (8) pages, and Respondents' Exhibit 1 comprising of (13) pages was introduced into evidence. Both exhibits were introduced without any objection.

### **Procedural Background**

The procedural history of this claim is as follows:

This cause of action for a claim of workers' compensation benefits was brought by the estate of the deceased Claimant. It appears that the Claimant's surviving widow/spouse filed a claim for death benefits and other additional benefits. On May 23, 2024, the Claimant's attorney wrote a letter to the Commission advising that he had been retained by the Claimant's widow in the above-referenced matter. Also, on May 23, the widow's attorney filed a Form AR-C with the Commission alleging that the Claimant sustained compensable injuries during the course and in the scope of his employment with the respondent-employer, which resulted in his death on April 10, 2024. According to this document, the attorney asserted entitlement to both initial and additional workers' compensation benefits. In fact, the attorney checked off all the boxes for every conceivable benefit under the law and noted on this document that a claim for death benefits was being made. At that time, the Claimant's attorney requested that the claim be referred to an Administrative Law Judge for a hearing.

The respondent-insurance-carrier's attorney wrote the following letter to the Commission: "In response to the recently filed Form C in this matter, the claim is denied." Said letter was filed with the Commission on May 31, 2024.

As a result, the Clerk of the Commission, assigned/transferred this claim to my office for a hearing. On June 24, 2024, my office sent Prehearing Questionnaires and Preliminary Notices to the parties. Both parties filed timely responses. Therefore, on August 28, 2024, I filed a Prehearing Order in this claim setting forth the parties' stipulations, contentions, and issues to be

presented at the hearing. Said hearing was scheduled for November 6, 2024, in El Dorado, Arkansas.

However, on October 25, 2024, the Claimant's attorney sent an email to my office stating, in relevant part: "... There is ongoing discovery that needs to be completed before we can proceed. In light of this, will you please send this back to general files until the parties complete discovery and then we will request that it be reassigned to your office for a hearing."

Therefore, on October 25, 2024, I canceled the full hearing and returned the claim to the Commission's general files.

Subsequently on October 28, 2024, the Claimant's attorney wrote to the Commission stating that the Claimant's widow informed him that she wished to terminate the attorney-client relationship. Counsel for the Claimant stated that he was asserting an attorney's fee agreement and asked that he be removed as attorney of record. He also asked that notice be taken of his attorney's lien and that documentation of this be made on the file.

In an Order filed on November 15, 2024, the Full Commission granted the motion for the Claimant's attorney to withdraw as counsel of record in this matter.

Since this time, there has been no affirmative action taken on the part of the Claimant to prosecute his claim or otherwise pursue benefits. In fact, the Claimant has not made a request for a bona fide hearing since May 2024.

Therefore, on or about January 21, 2025, the Respondents filed with the Commission a Respondents' Motion to Dismiss, along with a certificate of service to the Claimant's surviving spouse. Per this documentation, the Respondents confirmed that they served a true and correct copy of the foregoing pleading upon the Claimant's widow via regular mail and by way of a faxed copy. This was done on January 17, 2025.

The Commission sent a letter to the Claimant's surviving spouse on January 21, 2025, informing her of the Respondents' motion, and a deadline of twenty (20) days, for filing a written response. This notice was sent via first-class and certified mail by way of the United States Postal Service.

However, the Postal Service informed the Commission on January 23, 2025, that this item was delivered to the Claimant's widow's residence and left with an individual. Although the proof of delivery bears a signature, it is illegible. Also, the letter sent to the Claimant's surviving spouse via first-class mail has not been returned to the Commission.

Nevertheless, there has been no response from the Claimant's surviving spouse.

Pursuant to a Hearing Notice dated February 11, 2025, the Commission notified the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss. Said hearing was scheduled for March 5, 2025, at the Union County Courthouse, in El Dorado, Arkansas. This notice was sent via the United States Postal Service by way of first-class and certified mail.

The tracking information received from the Postal Service shows that they delivered this item to the Claimant's residence on February 14, 2025. This return receipt request shows that the Claimant's widow signed for delivery of this notice of hearing. The letter notice sent to the Claimant's widow by first-class mail has not been returned to the Commission. Still, there was no response from the Claimant's widow. However, based on the foregoing, I find that the Claimant's surviving spouse was provided with proper notice of the dismissal hearing.

Nevertheless, a hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney. Counsel for the Respondents argued, among other things, that the Claimant's widow has

failed to prosecute this claim for workers' compensation benefits and that it should be dismissed for want of prosecution per the laws and rules of the Commission as presented in his motion.

**Adjudication**

Therefore, the statutory provisions and Arkansas Workers' Compensation Rule applicable in the Respondents' motion for dismissal of this claim are outlined below:

Specifically, Ark. Code Ann. §11-9-702(a)(4) provides:

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

A review of the evidence shows that the Claimant's surviving spouse has had ample time to pursue this claim for workers' compensation benefits, but she has failed to do so. Specifically, the surviving spouse has not requested a hearing or otherwise tried to prosecute this claim since May 2024, when her former attorney made a request for a hearing. Most notably, the Claimant's widow has not responded to the Notices of this Commission, nor has she challenged the

Respondents' motion for dismissal of her claim. Hence, the evidence before me clearly preponderates that the Claimant's widow has failed to prosecute this claim for workers' compensation benefits. Moreover, I am convinced that the Claimant's surviving spouse has abandoned this claim.

After consideration of the evidence before me, I thus find that pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, this claim for initial workers' compensation benefits is hereby respectfully dismissed *without prejudice* to the refiling of it within the limitation periods specified under the Arkansas Workers' Compensation Act (the "Act").

**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:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Respondents filed with the Commission a Motion to Dismiss this claim, for want of prosecution for which a hearing was held.
3. The Claimant's widow has not requested a hearing since May 2024. Hence, the evidence preponderates that she has failed to prosecute this claim for workers' compensation benefits based upon the relevant provisions of Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission.
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 to Dismiss this claim due to a lack of prosecution is well-founded. Therefore, the motion is hereby granted, pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, *without prejudice*, to the refiling of it within the limitation period specified by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This dismissal is hereby ordered pursuant to the Ark. Code Ann. §11-9-702 and Commission Rule 099.13, *without prejudice*, to the refiling of this claim within the limitation periods specified under the Act.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**