

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H601414

MELISA CAPE,
EMPLOYEE

CLAIMANT

CAPITAL ONE FINANCIAL CORPORATION,
EMPLOYER

RESPONDENT

AMERICAN ZURICH INSURANCE COMPANY,
CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 24, 2026

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

Claimant, Pro Se, failed to appear.

Respondents represented by the Honorable Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 2, 2026, 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 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110(d)).

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

The record consists of the transcript of the June 2, 2026, hearing and the documents contained therein. In that regard, Respondents' Exhibit 1 is a Hearing Exhibit encompassing eleven numbered pages, and a cover sheet.

No testimony was taken.

BACKGROUND

On February 12, 2026, the Claimant alleged that she sustained hearing loss as a result of specific incident injury during and within the course and scope of her employment with respondent-employer, Capital One.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on March 6, 2026, wherein they controverted in its entirety the compensability of the claim.

On March 31, 2026, the Claimant filed a Notice of Appeal with the Commission asking that the insurance carrier reverse its denial of her claim and accept the claim as compensable. Moreover, the Claimant asked that the Respondents promptly initiate all appropriate benefits, including medical and indemnity benefits, if applicable.

The claim was assigned to my office. On April 30, 2026, my office sent out Prehearing Questionnaires and Preliminary Notices to the parties, with deadlines for filing their response.

Instead of filing prehearing pleadings and a preliminary response, the Claimant asked if her file with the Commission be withdrawn in its entirety. She asked that her claim be dismissed without prejudice and that it be removed from the Commission's active docket.

Therefore, on May 21, 2026, the Respondents filed a Motion to Dismiss and Incorporated Brief in Support with the Commission, along with a Certificate of Service to the Claimant. Hence, the Respondents served a copy of the foregoing pleading on the Claimant by depositing a copy thereof, postage prepaid, in the United States Mail to her last known address.

The Notice of Hearing was mailed to the parties on May 21, 2026. At that time, the case was set for a hearing on June 2, 2026, at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas. This Notice was sent to the Claimant via the United States Postal Service

via both first-class and certified mail. The Notice sent first class mail has not been returned to the Commission.

A hearing was in fact held on the Respondents' motion for dismissal of this claim. The Claimant failed to appear at the hearing. However, the Respondents appeared through their attorney. Respondents moved that the claim be dismissed for a lack of prosecution. Counsel noted that the Claimant has asked that her claim be dismissed *without prejudice* and she has never made a bona fide request for a hearing since the filing of her claim on March 31, 2026. As such, Counsel asked that the claim be dismissed *without prejudice* under the statutory provisions of Ark. Code Ann. §11-9-702 and the Commission's rule.

DISCUSSION

The statutory provisions and Commission Rule applicable in 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 the limitation periods specified in subdivisions (a)(1)-(3) of this section.

Ark. Code Ann. §11-9-702(d) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 (now codified at 11 C.A.R. § 25-110(d)) states:

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)

My review of the evidence in this matter shows the Claimant has failed to make a bona fide request for a hearing with respect to her claim for workers' compensation benefits. Hence, no probative action whatsoever has been put forth by the Claimant to resolve or otherwise pursue her claim. Despite having received proper notice of the dismissal hearing, the Claimant did not appear at the hearing to object to her case being dismissed. Most significantly, the Claimant has asked that her claim be dismissed without prejudice.

Considering all the foregoing evidence, I am compelled to conclude that the Claimant has abandoned her claim for workers' compensation benefits. Hence, the Claimant has failed to prosecute her claim. Therefore, based on all the aforementioned reasons, I find that the Respondents' motion to dismiss this claim is warranted. Commission Rule 099.13 (as codified at 11 C.A.R. §25-110 (d)), this claim is hereby respectfully dismissed for want of prosecution. Said dismissal is *without prejudice*, to the refile of this claim within the limitation period specified by law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Because 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. A Form AR-C has never been filed in this matter. However, there is other documentation before the Commission in this claim which constitutes the filing of a claim, which is Claimant's letter to the Commission on March 31, 2026.
3. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
4. The Claimant did not appear at the hearing to object to her claim being dismissed. She has asked that her claim be dismissed without prejudice.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, pursuant to 11 C.A.R. §25-110 (d), *without prejudice*, to the refiling of it within the limitation period specified by law.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to 11 C.A.R. §25-110 (d), this claim is hereby respectfully dismissed, *without prejudice*, to the refiling of it within the limitation period specified by law.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge