

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H103913**

**ERMA CARR,  
EMPLOYEE**

**CLAIMANT**

**PRIMO WATER CORP.  
EMPLOYER**

**RESPONDENT**

**SAFETY NAT'L CASUALTY CORP./  
BROADSPIRE-GALLAGHER BASSETT SERVICES, INC.  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED OCTOBER 15, 2021**

Hearing conducted on Friday, October 15, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Hot Springs, Garland County, Arkansas.

The claimant, Ms. Erma Carr, pro se, a resident of Hot Springs, Garland County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Jason M. Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Friday, October 15, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Replacement). On August 30, 2021, the respondents filed a motion to dismiss with the Commission, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was mailed due and legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice, via United States Postal Service (USPS) First Class Certified Mail, Return Receipt Requested, to her last known address of record with the Commission, which she received on September 22, 2021. (Commission Exhibit

1). Thereafter, the claimant failed and/or refused to file any response to the respondents' motion to dismiss, either via email, USPS, or any other medium of communication. She also failed and/or refused to appear at the hearing, or to cause anyone to appear on her half.

The Commission's file does not contain a Form AR-C, although the claimant initially was represented by an experienced attorney who generally files Form AR-Cs. The claimant's attorney filed a letter/motion with the Commission on August 12, 2021, advising the Commission he no longer represented the claimant. By order filed August 25, 2021, the Commission treated the claimant's attorney's August 12, 2021, letter as a motion to be relieved as counsel, and granted the motion.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

### **DISCUSSION**

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has failed and/or refused to prosecute her claim.

Of course, if no Form AR-C was ever filed on the claimant's behalf, the respondents' motion to dismiss is moot, the statute of limitations has and will continue to run unabated, and this order shall be deemed void *ab initio*. However, if a Form AR-C was in fact filed and somehow did not make it into the Commission's file, the respondents' motion is relevant, and this order dismissing her claim without prejudice is effective, and has and shall be given the full force and effect of law.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this claim.
2. The claimant failed and/or refused to either file a response to the respondents' motion to dismiss, to appear at the scheduled hearing, or to cause anyone to appear on her behalf. Therefore, the claimant is deemed to have waived her right to, and appearance at, the subject hearing.
3. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute her claim.
4. There exists no Form AR-C in the Commission's file in this claim. Consequently, if no Form AR-C was ever filed on the claimant's behalf, the respondents' motion to dismiss is moot, the applicable statute of limitations has been and shall continue to run, and this order is void *ab initio*.
5. However, if a Form AR-C was in fact filed on the claimant's behalf and it somehow did not make it into the Commission's file, the respondents' motion to dismiss without prejudice filed with the Commission on August 30, 2021, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone else acting legally and on her behalf, from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents are hereby ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

**IT IS SO ORDERED.**

MP/mp

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Mike Pickens  
Administrative Law Judge