

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO.:H203994**

DEBRA CZECH, EMPLOYEE	CLAIMANT
McDONALD'S, SELF-INSURED EMPLOYER	RESPONDENT
ARKANSAS McDONALD'S SELF-INSURED TRUST/RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

**OPINION FILED FEBRUARY 24, 2023**

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

Claimant, pro se, did not appear for the hearing.

Respondents represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the Respondents' motion to dismiss for want of prosecution, in the above-styled claim on February 22, 2023 pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this case should be dismissed due to the Claimant's failure to diligently prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was provided to all parties in the manner prescribed by law.

The record consists of the February 22, 2023 hearing transcript. Equally, the Commission's file was made a part of the record. It has been incorporated by reference

into the hearing transcript. The Respondents offered into evidence a Respondents' Hearing Exhibit Index consisting of ten (10) numbered pages, which was marked Respondents' Exhibit 1.

No testimony was taken during the hearing.

### **Procedural History**

The Claimant filed a Form AR-C with the Commission in the above-styled claim on June 1, 2022. Per this document, the Claimant alleged she sustained an injury while working for the respondent-employer on May 17, 2022. The Claimant requested only initial workers' compensation benefits in the form of medical expenses.

On June 3, 2022, Respondents (the insurance carrier) filed a Form AR-2 with the Commission accepting the claim as a compensable injury in the form of a "forehead contusion." However, according to this document, the insurance carrier accepted this as a "medical only claim."

Since the filing of the Form AR-C, there has been no activity on the part of the Claimant to pursue her claim for workers' compensation benefits. Most importantly, there has not been a request for a hearing made by the Claimant since the filing of the Form AR-C in June 2022. To date, the Claimant has not attempted in any process whatsoever to pursue her claim for workers' compensation benefits.

Therefore, on December 6, 2022 the Respondents filed with the Commission, a Motion to Dismiss for Failure to Prosecute, with a certificate of service to the Claimant. This document shows that Respondents served a copy of the motion for dismissal on the Claimant by mailing a copy of this document to the Claimant via the United States Postal Service.

Subsequently, on December 8, 2022 I sent a letter to the Claimant informing her of the motion, with a deadline of December 27, 2022 for filing a written objection with the Commission. Information received by the Commission from the United States Postal Service shows that they delivered this item to the Claimant by leaving a copy of it with an individual at her residence on December 10, 2022. The electronic return receipt appears to bear the scribbled signature of the Claimant's last name only.

Nevertheless, there has been no reply from the Claimant.

The Commission sent a Notice of Hearing on January 5, 2023 to the parties by way of certified mail, to inform them that a hearing on Respondents' motion to dismiss was scheduled for February 22, 2023, at 9:00 a.m., at the Commission, in Little Rock.

Information received from the United States Postal Service confirms that the Claimant's copy of the hearing notice was delivered to her home and left with an individual. My review of proof of the delivery information reveals that the Claimant signed for delivery of this item on January 7, 2023.

Thus far, there has been no reply from the Claimant.

The dismissal hearing was in fact conducted on the Respondents' Motion to Dismiss for Failure to Prosecute as scheduled. However, the Claimant did not attend the hearing. The Respondents' attorney appeared at the hearing and renewed his motion for this claim to be dismissed due to the Claimant's failure to take any action to pursue it. Specifically, counsel basically pointed out that all appropriate benefits have been paid; and on May 19, 2022 the Claimant was released from care for her forehead contusion injury. The Respondents' attorney pointed out that although it has been nine (9) months since the injury happened, the Claimant has done nothing to prosecute or pursue her

claim; that she has not responded to the notices of this Commission; and she failed to appear at the hearing to object to her claim being dismissed. The Respondents' attorney concluded that the Claimant has exhibited a pattern of inaction to pursue/prosecute this matter which clearly establishes that she has failed to prosecute her claim. Counsel therefore requested that this claim be dismissed under the provisions of Ark. Code Ann. §11-9-702 (d) and Commission Rule 099.13.

### **Discussion**

Although the Claimant filed a claim for initial medical expenses, the evidence preponderates that this is a claim for additional benefits. Therefore, the applicable statute is Ark. Code Ann. §11-9-702 (d) (Repl. 2012), which provides:

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 reads, in relevant part:

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 record shows that more than six (6) months have passed since the Claimant's June 2022 filing of the Form AR-C for her admittedly compensable contusion of the forehead injury. However, since this time, the Claimant has failed to make a request for a hearing before this Commission for a hearing on the merits of her claim for workers' compensation benefits. Moreover, the Claimant has not voiced any form of objection to the dismissal of her claim. Of significance, the Claimant did not

appear at the dismissal hearing to object to her claim being dismissed despite having received notice of this proceeding.

Therefore, based on my review of the documentary evidence, and all other matters properly before this Commission, I find that Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. §11-9-702 (d) (Repl. 2012), and Commission Rule 099.13. This dismissal is without prejudice, to the refiling of this claim within the limitation period specified by law.

### **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 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed a Form AR-C with the Commission on June 1, 2022 for her admittedly compensable work-related injury, which occurred on May 17, 2022.
3. Since the filing of her claim in June 2022, more than six (6) months have passed without the Claimant having requested a hearing or otherwise attempted to pursue her claim.
4. The Respondents filed a Motion to Dismiss for Failure to Prosecute, with the Commission on December 6, 2022. The Claimant was informed of said motion via the manner prescribed by law.
5. A hearing was scheduled and held on the Respondents' motion to dismiss.
6. Reasonable notice of the hearing was had on all parties in the manner provided by law.
7. The Claimant failed to appear at the hearing and has not responded to the written notices of this Commission. Hence, the Claimant has not objected to her claim being dismissed.

8. The evidence preponderates that Respondents' motion to dismiss for want of prosecution is warranted.
9. That Respondents' motion to dismiss this claim is hereby granted under Ark. Code Ann. §11-9-702 (d), and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

Based on the foregoing findings of fact and conclusions of law, this claim for workers' compensation benefits filed on June 1, 2022 is dismissed without prejudice, to the refiling of it within the specified time.

**IT IS SO ORDERED.**

---

**Chandra L. Black**  
**Administrative Law Judge**