

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H107769

BRANDY L. DAVIS,  
EMPLOYEE

CLAIMANT

TYSON POULTRY, INC.,  
EMPLOYER

RESPONDENT

TYNET CORPORATION,  
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR  
(TPA)

RESPONDENT

OPINION FILED MARCH 18, 2022

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

Claimant represented by the Honorable Gregory R. Giles, Attorney at Law, Texarkana, Arkansas. Mr. Giles waived his appearance at the hearing.

Respondents represented by the Honorable James A. Arnold II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on March 15, 2022 in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). The sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13. Reasonable notice of the dismissal hearing was tried on all the parties in the manner set by law.

The record consists of the hearing transcript of the March 15, 2022. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the hearing.

### **Procedural History**

Prior to retaining legal counsel, the Claimant filed a Form AR-C with the Commission on September 23, 2021. The Claimant essentially stated that she injured her left shoulder on August 26, 2021, while performing her employment duties. She asserted her entitlement to both initial and additional workers' compensation benefits.

Subsequently, the Claimant's attorney filed a second Form AR-C with the Commission on September 27, 2021. Per this document, the Claimant again asserted her entitlement to both initial and additional workers' compensation benefits. The Claimant's alleged that she sustained a work-related injury on August 26, 2021. Counsel for the Claimant briefly described the cause of injury and the part of body injured as being the Claimant's left shoulder.

On or about September 24, 2021, the Respondents filed a Form AR-2 with the Commission accepting this as a compensable claim for an injury to the Claimant's left shoulder.

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits before the Commission in her claim for workers' compensation benefits.

Therefore, on January 18, 2022, the Respondents filed with the Commission a motion to dismiss due to a lack of prosecution, with a certificate of service to the Claimant's attorney.

On January 25, 2022 the Commission sent a notice to the Claimant and her attorney informing them of the motion, with a deadline of February 15, 2022 for filing a written objection to the motion.

That same day, the Claimant's attorney sent an e-mail to the Commission. This correspondence reads: "The only unresolved issue in this matter was one unpaid bill. Mr. Zuerker

has confirmed for me his client will agree to pay this bill. As a result, we have no objection to this matter being dismissed without prejudice at this time.”

On January 31, 2022, the Commission sent a Notice of Hearing to the parties letting them know that a hearing had been scheduled for March 15, 2022 on the Respondents’ motion to dismiss.

Per an e-mail to the Commission on March 14, 2022, the Claimant’s attorney waived his appearance at the hearing. He also confirmed again that the Claimant has no objection to a dismissal without prejudice.

A hearing was in fact conducted on the Respondents’ motion to dismiss as scheduled. During the hearing, counsel for the Respondents essentially moved that the claim be dismissed due to a lack of prosecution.

### **Discussion**

In that regard, the applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702 (Repl. 2012) 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 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)

In the present matter, my review of the evidence shows that the Claimant has not requested a hearing since the filing of the Forms AR-C in September 2021. However, since this time, the Respondents have paid or agreed to pay appropriate benefits on this claim. As a result, the Claimant does not object to her claim being dismissed without prejudice.

Accordingly, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim should be granted pursuant to Rule 099.13. This claim is hereby dismissed without prejudice, to the refiling of it within the limitation period specified by law. Considering that this claim has been dismissed under the provisions of Rule 099.13, a ruling pursuant to Ark. Code Ann. §11-9-702 (Repl. 2012) is not deemed essential and has been rendered moot and not addressed herein this Opinion.

**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 parties were provided reasonable notice of the motion to dismiss and of the hearing thereon.
3. The evidence preponderates the Respondents' motion to dismiss due to want of prosecution is well founded.
4. That the Respondents' motion to dismiss is hereby granted pursuant to Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, I find that per Commission Rule 099.13, this claim is hereby dismissed without prejudice, to the refiling within the limitation period specified by law.

**IT IS SO ORDERED.**

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CHANDRA L. BLACK  
Administrative Law Judge