

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H405149**

**CYNTHIA DEAN,
EMPLOYEE**

CLAIMANT

**FIVE RIVERS MEDICAL CENTER, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JANUARY 7, 2025

Hearing conducted on Friday, December 27, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Ms. Cynthia Dean, *Pro Se*, of Imboden, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable S. Shane Baker, Jonesboro, Arkansas.

I. BACKGROUND

This matter comes before the Commission for a full hearing. However, when the Claimant failed to show up for the full hearing, Respondents' counsel made a motion to convert the full hearing into a motion to dismiss hearing. I granted the motion. Respondents next argued for dismissal of the claim. Respondents admitted Respondents Exhibit 1, a written Motion to Dismiss with exhibits, consisting of 4 pages. Also, admitted into evidence was blue-backed Form AR-C, Form AR-1, Form AR-2, copy of hearing notice/ Prehearing Order filed October 29, 2024, and certified return receipt dated November 1, 2024, *as discussed infra*.

The Claimant worked for Respondent/Employer as a cook and allegedly injured herself on July 12, 2024. The record reflects on August 12, 2024, a Form AR-C was filed with the

Commission, purporting that Claimant became lightheaded and sick to her stomach when she opened the convection oven and smelled the fumes. She did not pass out due to the fumes. On August 13, 2024, a Form AR-1 was filed with the Commission purporting that this incident was reported to Respondent/Employer on the same day as the incident and that the Claimant went to the emergency department to be seen. On August 13, 2024, a letter and Form AR-2 was filed by Respondents denying compensability of the alleged injury.

A prehearing conference took place on October 29, 2024, establishing the issues in the case and a date for the matter to be heard, December 27, 2024. A prehearing order was filed on the same day as the prehearing conference and was sent to Claimant's address of record, certified mail, as official notice of the full hearing. The Claimant received the notice on November 1, 2024.

The Claimant sent an email to opposing counsel and the Commission requesting that her claim be dropped because she had a sick witness. In an email sent to both parties on December 25, 2024, I asked the Claimant if she is requesting a continuance due to her sick witness, if so, I will consider her motion. I also informed the Claimant if she wanted to dismiss her claim, I will be at the courthouse December 27, 2024, and at that time if the Respondents made a motion to dismiss then I will entertain it, especially if she wasn't present for the full hearing. In an email dated December 26, 2024, Claimant stated, "I want to just drop my case and put this behind me...". In preparation for the full hearing next day, the Respondents filed a motion to dismiss and attached Claimant's emails as an exhibit. The Claimant did not appear for the full hearing on December 27, 2024, as a result, the Respondents made a motion to dismiss. I have heard Respondents argument on the motion, accepted evidence, and taken the matter under advisement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, 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 Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the December 27, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute her claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

III. DISCUSSION

AWCC 099.13 provides:

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.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

Consistent with a full hearing and AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with reasonable notice, to the Claimant. The certified hearing notice was claimed by Claimant on November 1, 2024. Thus, I find by the preponderance of the evidence that reasonable notice was given and received by the Claimant.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant has sent emails to the Commission and opposing counsel requesting to drop her claim so she can put this matter behind her. The Claimant confirmed her desire to drop her claim when she failed to appear at her own full hearing that she requested. Thus, it is clear, the Claimant has abandoned her claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted, and Claimant's claim is dismissed *without prejudice*.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge