

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H010428**

**MONICA EDWARDS, EMPLOYEE**

**CLAIMANT**

**ABOVE & BEYOND HOME CARE, EMPLOYER**

**RESPONDENT**

**STONETRUST INSURANCE CO., CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JUNE 18, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Ms. Monica Edwards, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Zachary Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on May 6, 2021, 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, and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the May 6, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

**DISCUSSION**

On December 16, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant alleged that she sustained a compensable injury to her back and other whole body on

December 7, 2020, while working for Respondent-Employer. Specifically, the following description was provided for Claimant’s accidental injury: “Claimant was assisting a patient to his wheelchair when she felt pain in her back. Claimant sustained an injury to her back and other whole body.”

On January 12, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission indicating that the claim was denied.

Subsequently, there was no action taken by Claimant to prosecute her claim after the filing of the Form AR-C on December 16, 2020.

Therefore, on March 4, 2021, Respondents filed a Motion to Dismiss for failure to prosecute and a Certificate of Service to Claimant. On March 9, 2021, the Commission sent a Notice to Claimant advising her of Respondents’ Motion to Dismiss and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated March 30, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents’ Motion to Dismiss for failure to prosecute. Said hearing was scheduled for May 6, 2021, at 10:00 a.m., at the Arkansas Workers’ Compensation Commission, Hearing Room “A,” 324 S. Spring Street, Little Rock, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant’s address, was delivered on April 1, 2021, at 1:38 p.m., and a signature was obtained. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents’ Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing. At the hearing, Respondents’ attorney advised that since the filing of the Form AR-C on December 16, 2020, Claimant had failed to take any action to pursue her claim for workers’

compensation benefits. He also noted that there were no medical records in the file. As such, counsel requested that the motion for dismissal be granted without prejudice.

A review of the evidence shows that Claimant has had sufficient time to pursue her claim for workers' compensation benefits. It has been more than six (6) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute her claim. Hence, Claimant has failed and/or refused to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion Dismiss to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for benefits is hereby dismissed, without prejudice, subject to the refiling within the limitation period specified under the Act.

#### **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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 16, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant alleged that she sustained a compensable injury to her back and other whole body on December 7, 2020, while working for Respondent-Employer.
3. On January 12, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim.
4. More than six (6) months have passed since Claimant filed a Form AR-C with the Commission. Since this time, Claimant has failed to make a *bona fide* request for a hearing or otherwise pursue her claim for workers' compensation benefits.

5. On March 4, 2021, Respondents filed a Motion to Dismiss for failure to prosecute.
6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of her claim, as she has failed to timely prosecute this matter.
7. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents' Motion to Dismiss for Failure to Prosecute is hereby granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, subject to the refiling of the claim within the limitation period specified under the Act.
9. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, subject to the refiling of the claim within the limitation period specified under the Act.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**