

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G902239**

**VICKY EMBERTON,  
EMPLOYEE**

**CLAIMANT**

**CENTRAL ARKANSAS DEVELOPMENT  
COUNCIL, INC.,  
EMPLOYER**

**RESPONDENT NO. 1**

**ATA WORKERS' COMPENSATION  
SELF-INSURED TRUST/RISK MG'T RESOURCES, INC.  
INSURANCE CARRIER/TPA**

**RESPONDENT NO. 1**

**STATE OF ARKANSAS,  
DEATH & PERMANENT TOTAL  
DISABILITY TRUST FUND**

**RESPONDENT NO. 2**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED OCTOBER 20, 2021**

Hearing conducted on Tuesday, October 19, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable Laura Beth York, Rainwater, Holt & Sexton, Little Rock, Pulaski County, Arkansas.

Respondent No. 1 was represented by the Honorable Jarrod Parrish, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable Christy L. King, waived appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was conducted on Tuesday, October 19, 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 September 15, 2021, Respondent No. 1 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 and her attorney were mailed due and legal notice of Respondent No. 1's 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.

The claimant's attorney appeared on the claimant's behalf at the hearing. She confirmed that to date Respondent No. 1 had paid all appropriate benefits in accordance with the ALJ's opinion and order filed March 30, 2021. In addition, Respondent No. 1 recently voluntarily accepted and paid in full permanent partial disability (PPD) benefits commensurate with the permanent anatomical impairment rating the claimant's treating orthopedic surgeon had issued her after he recently performed arthroscopic surgery on her left knee.

After conducting her due diligence, having inquired of Respondent No. 1's attorney, and confirmed and verified Respondent No. 1 in fact had to date paid all appropriate medical and indemnity benefits, including the recently-issued PPD rating, the claimant's attorney acknowledged on the record she was aware of no outstanding issues which were subject to litigation at this time with respect to the above-styled claim number. Consequently, she withdrew her prehearing questionnaire response filed in the morning on the same day and prior to the subject hearing of Tuesday, October 19, 2021. For the record, the claimant's attorney objected to Respondent No. 1's motion to dismiss without prejudice.

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 Respondent No. 1 has to date paid all appropriate medical and indemnity benefits pursuant to the ALJ's opinion of March 30, 2021. Moreover, Respondent No. 1 has voluntarily accepted and paid in full the claimant's treating orthopedic surgeon's post-left knee arthroscopic surgery impairment rating.

Consequently, although the claimant's attorney objected on the record to Respondent No. 1's request for dismissal without prejudice, there exists no legal or factual basis for the objection since there exist(s) no outstanding issue(s) to be determined and/or litigated with respect to the above-styled claim number. Of course, if and when any such issues arise, the claimant's attorney may file a new Form AR-C requesting any and all appropriate specific, additional benefits, if any, and request a hearing thereon. In the meantime, consistent with the purpose of the applicable statute of limitations, the subject claim shall be dismissed allowing the statute to begin to run. *See, e.g., Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994).

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's attorney acknowledged on the record that Respondent No. 1 has to date paid all appropriate medical and indemnity benefits associated with the above-styled claim number.
3. The claimant's attorney objected to this claim's dismissal without prejudice; however, the preponderance of the evidence of record reveals there exist(s) no outstanding issue(s) subject to determination and/or litigation with respect to the above-styled claim number. Furthermore, the claimant has not made any *bona fide* hearing request within the last six (6) months, since it is both beyond reasonable dispute, and the claimant and Respondent

No. 1 mutually agree Respondent No. 1 has to date paid any and all outstanding medical and indemnity benefits.

4. Therefore, Respondent No. 1's motion to dismiss without prejudice filed with the Commission on September 15, 2021, filed with respect to the above-styled claim number, 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.
5. Of course, Respondent No. 1 shall remain responsible for the payment of any and all reasonably necessary medical treatment, if any, related to the claimant's admittedly compensable left knee injury of March 29, 2019.

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).

Respondent No. 1 hereby is ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp