

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009641

RACHEL FAUSETT, EMPLOYEE

CLAIMANT

**ARKANSAS VETERINARY EMERGENCY
& SPECIALITY, EMPLOYER**

RESPONDENT

**STARR INDEMNITY & LIABILITY CO./
CARRIER/TPA**

RESPONDENT

OPINION FILED DECEMBER 14, 2021

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

Claimant, Ms. Rachel Fausett, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Kevin J. Staten, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 10, 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 December 10, 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 by reference.

DISCUSSION

Claimant alleged that she sustained a compensable injury to her right hand on November 16, 2020, while working for the Respondent-Employer. On December 1, 2020, Respondent-

Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim and paying some benefits.

On December 15, 2020, Claimant’s attorney of record at the time filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of November 16, 2020, and asserted her entitlement to initial and additional workers’ compensation benefits. On the Form AR-C, Claimant’s cause of injury was described as: “Claimant had her hand underneath another coworker’s torso, while in the process of restraining a patient. A pair of scissors that were in the coworker’s pocket opened up and stabbed claimant’s hand. Claimant sustained injuries to right hand and other whole body.”

On May 3, 2021, Claimant’s attorney of record filed a Motion to Withdraw as counsel, and the Full Commission granted the Motion on May 26, 2021.

On September 29, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On September 30, 2021, the Commission sent a Notice to Claimant advising her of Respondents’ Motion and a deadline for filing a written response. However, the certified letter was returned to sender with the following notation “Unclaimed; Unable to Forward” on October 27, 2021. There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated October 29, 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 December 10, 2021, at 2:00 p.m., at the Arkansas Workers’ Compensation Commission, Hearing Room “A”, Third Floor, 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 returned to sender with the

following notation “Unclaimed; Unable to Forward” on November 22, 2021. There was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents’ Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that Claimant had not taken any action in the matter and had not sought any type of *bona fide* hearing before the Workers’ Compensation Commission since she filed the Form AR-C. As such, Counsel requested that the claim be dismissed, with prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue her claim for workers’ compensation benefits. It has been approximately one (1) year 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 to timely prosecute her claim for workers’ compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents’ Motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

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. Claimant alleged that she sustained an injury to her right hand on November 16, 2020, while working for Respondent-Employer.
3. On December 1, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission accepting the claim and paying benefits.
4. On December 15, 2020, Claimant's attorney of record at the time filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits in this matter.
5. On May 3, 2021, Claimant's attorney of record filed a Motion to Withdraw as counsel, and the Full Commission granted the motion on May 26, 2021.
6. On September 29, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
7. Approximately one (1) year has passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve her claim for workers' compensation benefits.
8. 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.
9. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
10. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
11. 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, to the refiling of this claim within the applicable time period.

FAUSETT – H009641

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE