

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H300759**

**AMBER V. FONTENOT,
EMPLOYEE**

CLAIMANT

**RESOLUTE PRODUCTS U.S., INC.,
EMPLOYER**

RESPONDENT

**AMERICAN ZURICH INS. CO./
ZURICH INS. CO.,
CARRIER/TPA**

RESPONDENT

**AMENDED OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MAY 9, 2023**

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

The claimant, Ms. Amber Fontenot, is represented by Mr. Gregory R. Giles, Moore, Giles & Matteson, L.L.P., Texarkana, Miller County, Arkansas, who waived appearance at the hearing.

The respondents were represented by the Honorable Michael Stiles, Newkirk & Jones, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, May 9, 2023, to determine whether this claim should be voluntarily dismissed without prejudice for lack of prosecution at the claimant's request pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Replacement).

The claimant advised her attorney she wished to voluntarily dismiss her workers' compensation claim without prejudice. Therefore, by letter motion filed with the Commission on February 22, 2023, the claimant's attorney requested the claim be dismissed without prejudice at the claimant's

request, “due to circumstances beyond her control.” (*See*, Commission’s file.). The claimant’s attorney copied the respondent insurer on this letter. Pursuant to the applicable law the claimant was mailed a copy of this letter motion to dismiss (MTD) via the United States Postal Service (USPS), First Class Mail, Return Receipt Requested; and both her and the respondents’ attorneys were copied on this letter. The Commission set a hearing on the motion, duly and legally notifying the claimant, as well as both her and the respondents’ attorney of the date, time, and place of the subject hearing. The claimant’s attorney advised that he and the claimant waived appearance at the subject hearing.

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’ MTD. 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 reveals the claimant has failed and/or refused to prosecute her claim at this time, and she requests the voluntary dismissal of the claim. According to the respondents’ attorney as stated on the record at the hearing, this claim was initially accepted as a medical only claim and, upon information and belief the claimant continues to work with the respondent-employer.

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. After having been mailed due and legal notice of the hearing on the claimant's voluntary MTD, both the claimant and her attorney waived appearance at the hearing.
3. The claimant has requested her claim be voluntarily dismissed without prejudice at this time, "due to circumstances beyond her control." Moreover, she has not requested a hearing within the last six (6) months, and she has not otherwise taken any action(s) to prosecute her claim.
4. Therefore, the respondents' voluntarily MTD without prejudice filed on February 22, 2023, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b), and Commission Rule 099.13.

This Order shall not be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone 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).

The respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp