

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F309361**

**DEBBIE FUTRELL-HALL, EMPLOYEE**

**CLAIMANT**

**SIPES MINISTRIES, EMPLOYER**

**RESPONDENT NO. 1**

**BROTHERHOOD MUTUAL INS. CO.  
CARRIER/TPA**

**RESPONDENT NO. 1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED AUGUST 16, 2022**

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

Claimant, Ms. Debbie Futrell-Hall, was represented by Mr. Marvin "Chip" Leibovich, Jr., Attorney at Law, Conway, Arkansas. Claimant and her attorney failed to appear at the hearing.

Respondents No. 1 were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on August 10, 2022, 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 August 10, 2022, 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 asserts that she injured her neck when she fell down some stairs while at work for Respondent-Employer on August 20, 2003.

On August 29, 2003, a Form AR-2 was filed with the Commission indicating that additional time was needed to investigate the compensability of the claim. A second Form AR-2 was filed with the Commission on September 5, 2003, indicating that benefits were being paid.

On September 14, 2003, Claimant's attorney of record at the time filed a Form AR-C with the Commission. Per the form, Claimant asserted an accident date of August 20, 2003, and asserted her right to initial workers' compensation benefits. The form described her cause of injury and the injuries to her body as, "Fell down stairs; injured neck, right hand, right arm, both legs and upper back."

In July of 2005, Claimant's attorney of record requested to withdraw from the case and that request was granted by the Commission. Also, on July 27, 2005, Claimant's new attorney filed an entry of appearance.

A second form AR-C was filed by Claimant's second attorney of record on October 17, 2005. Per this Form AR-C, Claimant was seeking permanent partial disability benefits, permanent total disability benefits, additional temporary total disability benefits, additional medical expenses, and an attorney's fee.

On August 3, 2009, a third Form AR-2 was filed with the Commission indicating that indemnity benefits were being paid.

On November 6, 2017, the Claimant filed a third Form AR-C on her own behalf and without indicating that she was represented by counsel. Per this form, Claimant asserted her entitlement only to additional medical expenses.

On June 3, 2022, Respondents No. 1 filed a Motion to Dismiss due to lack of prosecution by the Claimant. On June 10, 2022, the Commission sent a Notice to the Claimant, via her attorney of record at the time, through both certified mail and regular mail, advising him of Respondents No. 1's Motion and a deadline for filing a written response. The regular mail sent to Claimant's attorney at his address of record was returned to sender, and there was no response from the attorney or the Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated July 7, 2022, the Commission advised the parties that the matter had been set for a hearing on Respondents No. 1's Motion to Dismiss. Said hearing was scheduled for August 10, 2022, at 2:00 p.m., at the Arkansas Workers' Compensation Commission, 324 S. Spring Street, Hearing Room A, Little Rock, Arkansas. The Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's attorney's address, as well as Claimant's home address. United States Postal Service records indicate that the Certified Letter sent to Claimant's home address was delivered on July 16, 2022, at 12:59 p.m., and a signature was obtained. However, there was no response from the Claimant or her attorney in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents No. 1's Motion to Dismiss. Respondents No. 1 appeared through their attorney; however, Claimant and her attorney failed to appear at the hearing.

Counsel advised that the claim (with an injury date of August 20, 2003) had a very long procedural history, and it appeared that the Claimant was no longer pursuing benefits. Counsel

stated that the last date of payment of benefits was on May 5, 2021. As for the last Form AR-C filed by the Claimant on her own behalf requesting only additional medical treatment, counsel stated that all medical benefits had been paid. Counsel informed the Commission that he had not had any communication with Claimant or her attorney and that it was his belief that her attorney was no longer engaged in the practice of law. The Claimant had not taken any action in the matter and as such, Counsel requested that the claim be dismissed, without 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. The claim was filed in August of 2003, and the last Form AR-C was on November 6, 2017, almost five years ago. To date, Claimant has not requested a *bona fide* hearing or otherwise attempted to further prosecute her claim since the last Form AR-C was filed. Hence, Claimant has failed to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents No. 1's 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 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On August 29, 2003, a Form AR-2 was filed with the Commission indicating that additional time was needed to investigate the compensability of the claim. A second Form AR-2 was filed with the Commission on September 5, 2003, indicating that benefits were being paid.
3. On September 14, 2003, Claimant's attorney of record at the time filed a Form AR-C with the Commission, asserting her right to initial workers' compensation benefits in this matter.
4. In July of 2005, Claimant's attorney of record requested to withdraw from the case and that request was granted by the Commission. Also, on July 27, 2005, Claimant's new attorney filed an entry of appearance.
5. A second form AR-C was filed by Claimant's second attorney of record on October 17, 2005, asserting her right to permanent partial disability benefits, permanent total disability benefits, additional temporary total disability benefits, additional medical expenses, and an attorney's fee.
6. On August 3, 2009, a third Form AR-2 was filed with the Commission indicating that indemnity benefits were being paid.
7. On November 6, 2017, the Claimant filed a third Form AR-C on her own behalf and without indicating that she was represented by counsel. Per this form, Claimant asserted her entitlement only to additional medical expenses.
8. On June 3, 2022, Respondents No. 1 filed a Motion to Dismiss due to lack of prosecution by Claimant.
9. A little less than five (5) years have passed since Claimant filed her third Form AR-C with the Commission in this matter. 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.
10. 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.
11. Respondents No. 1's Motion to Dismiss for Failure to Prosecute is well founded.

12. Respondents No. 1's 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.
13. 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.

**IT IS SO ORDERED.**

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