

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H010885

CONNIE GUILD, EMPLOYEE	CLAIMANT
WALMART INC., EMPLOYER	RESPONDENT
WALMART CLAIMS SERVICES, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED AUGUST 31, 2023**

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, did not attend the hearing.

Respondents represented by the Honorable R. Scott Zuerker, Attorney at Law, Fort Smith, Arkansas.

**Statement of the Case**

A hearing was held on August 30, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether the above-referenced case should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the August 30, 2023, hearing and the documents held therein. Additionally, the entire Commission's file has been made a part of the record. It is hereby incorporated into the hearing transcript by reference.

### **Procedural History**

On January 12, 2022, the Claimant’s then attorney filed with the Commission a claim for Arkansas workers’ compensation benefits by way of a Form AR-C. Counsel alleged that the Claimant sustained compensable injuries on February 1, 2020, while performing her employment duties for the respondent-employer. Counsel asked for both initial and additional workers’ compensation benefits on behalf of the Claimant. In fact, her attorney checked all the boxes for every benefit allowed under the law in connection with this claim. Per the Form AR-C, the Claimant’s accidental injury occurred as follows: “Fell back off a ladder and landed on a cart, and then fell on the floor while getting something off the top shelf in the freezer. She sustained injuries to the back, hip, and other whole body.”

The claims adjuster filed a Form AR-2 with the Commission on December 28, 2020, accepting this as a compensable claim for an injury to the Claimant’s left hip in the form of a closed fracture.

On November 14, 2022, the Claimant’s attorney filed a motion to withdraw as her counsel. The Full Commission entered an Order on November 29, 2022, granting the motion for the Claimant’s attorney to withdraw from representing her in this claim.

Subsequently, there was no action taken by the Claimant to resolve her claim, and nor did she request a hearing.

Therefore, the Respondents filed a Motion to Dismiss with the Commission on May 22, 2023. The Respondents’ pleading included a certificate of service to the Claimant affirming that they sent a copy of the above motion to the Claimant via certified mail through the United States Postal Service.

The Commission sent a letter-notice on May 24, 2023, to the Claimant by mailing it to her last known address via first-class and certified mail. Per this correspondence, the Commission gave the Claimant a deadline of twenty days, for filing a written response to the Respondents' motion.

On May 25, 2023, the Claimant sent an email to the Commission objecting to the Respondents' motion. Specifically, the Claimant said that she was is in the process of retaining legal counsel. She also said that her medical doctor could send records showing that her injury is permanent and will continue to worsen and eventually cause her to be disabled.

As a result, the Respondents' motion was held in abeyance for thirty days so that the Claimant could retain legal counsel and start the hearing process.

On June 21, 2023, the Claimant wrote to the Commission saying she had retained an attorney and was waiting for her paperwork from her previous attorney's law firm. However, to date, the attorney named in this correspondence has not entered an appearance with the Commission on behalf of the Claimant in this claim.

Therefore, pursuant to a Hearing Notice dated July 18, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution of it by the Claimant. The notice was mailed to the Claimant via first-class and certified mail. Said hearing was scheduled for August 30, 2023, at the Commission in Little Rock, Arkansas.

The notice that the Commission sent to the Claimant via first-class mail has not been returned to the Commission. Although the postal service notified the Commission, they were unable to locate any delivery information in their records regarding the above item, a notation in the Commission's file was authored by the manager of our Legal Advisors Division, which shows

that on July 18, the Claimant contacted his office about the dismissal hearing. At that time, the Claimant indicated among other things, that she would be attend the hearing.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. Yet, the Claimant did not attend the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel noted that it has been more than six months since the filing of the claim, and a hearing has not been requested by the Claimant. He also noted that the Claimant has had reasonable time to move forward with this claim but has failed to do so. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. §11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice due to a lack of prosecution of the case by the Claimant.

### **Discussion**

The record before me proves that the Claimant has failed to promptly prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since the filing of the Form AR-C in January 2022. More importantly, the Claimant did not appear at the hearing to object to her claim being dismissed.

Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits in the proper manner set forth under the law. Hence, the evidence proves that the Claimant has failed to make a sincere effort to pursue her claim.

Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, without prejudice to the refileing of it within the limitation period specified by law.

**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. The Respondents filed with the Commission, a motion for dismissal of this claim due to a lack of prosecution by the Claimant, for which a hearing was held.
3. The Claimant has not requested a hearing since the filing of her Form AR-C, which was done in January 2022. Hence, the evidence preponderates that the Claimant has failed to prosecute her claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was had on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, without prejudice, per Arkansas Code Ann. §11-9-702 and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

Following the findings of fact and conclusions of law set forth above, this claim is hereby dismissed per Arkansas Code Ann. 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice, to the refiling of it, within the limitation period specified by law.

**IT IS SO ORDERED.**

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**HON. CHANDRA L. BLACK**  
**Administrative Law Judge**