

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: G808098**

CATHERINE HARRIS,  
EMPLOYEE

CLAIMANT

MARSH POINTE MANAGEMENT, LLC,  
EMPLOYER

RESPONDENT NO. 1

BERKSHIRE HATHAWAY HOMESTATE,  
THIRD PARTY ADMINISTRATOR

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND

RESPONDENT NO. 2

OPINION FILED SEPTEMBER 16, 2021

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

Claimant, pro se, failed to appear at the hearing.

Respondents No. 1 represented by Mr. Jason M. Ryburn, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

**Statement of the Case**

A hearing was held on September 8, 2021, in the above-styled claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether this claim 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 had on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the September 8, 2021, dismissal hearing. The Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

### **Discussion**

On March 7, 2019, the Claimant's attorney filed with the Commission, a claim for Arkansas workers' compensation benefits on behalf of the Claimant by way of a Form AR-C. Specifically, the Claimant's attorney alleged: "Claimant was in the course and scope of her employment when she tripped over a broom. She sustained injuries to her left wrist and other body." Her attorney checked all the boxes for both initial and additional workers' compensation benefits. The date of the alleged injury was November 21, 2018.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on December 10, 2018, wherein they accepted compensability of the claim for an injury to the Claimant's left arm, in the form of a fracture to her left radius. Therefore, the Respondents paid some benefits to and on behalf of the Claimant for her admittedly compensable injury.

On October 13, 2020, a prehearing telephone conference was held before the Commission with the parties. At that time, the Commission set this claim for a hearing on the merits for November 18, 2020, at the Arkansas Workers' Compensation Commission, in Little Rock.

The Claimant's attorney filed an identical claim for the same injury with the Commission on October 30, 2020.

On November 4, 2020, the Claimant's attorney sent an e-mail to the Commission stating that the parties had resolved the issue to be litigated at the hearing. Therefore, on November 6, 2020, the Commission canceled the hearing and returned the file to the Commission's general files.

Subsequently, there was no action taken by the Claimant to pursue her claim.

On February 12, 2021, Respondents No. 1 filed a Respondents' Motion to Dismiss, along with a Certificate of Service to the Claimant's attorney and counsel for the Trust Fund.

The Commission sent a letter to opposing counsels on February 25, 2021 notifying them of Respondents No. 1's motion for dismissal. Per this correspondence, a deadline of March 18, 2021 was given for filing a written response.

On March 23, 2021, the Claimant's attorney sent an e-mail to the Commission stating that she had no object to a Motion to Dismiss without prejudice, and she waived her appearance at the hearing.

However, counsel for the Claimant filed a third claim for the same injury on April 6, 2021. Per correspondence from the Claimant's attorney, she refiled the claim for statute of limitations purposes.

On March 24, 2021, the Commission scheduled a hearing for April 14, 2021, on the motion to dismiss. However, on March 27, 2021, the Claimant's attorney sent the following e-mail to the Commission, "I am reviewing this file again and I am going to change my position and object to the Motion to Dismiss. I will appear at the hearing on April 14, 2021." As a result, the motion was held in abeyance and the dismissal hearing was canceled.

As a result, on May 19, 2021, the matter was scheduled for prehearing telephone conference for June 9, 2021. However, the Claimant's attorney sent an e-mail to the Commission on the morning of the telephone conference saying that the sole issue for determination was an underpayment of permanent partial disability, but that issue had been resolved. Counsel requested that the file be returned to the Commission's general file. On June 11, 2021 the file was returned to the Commission's general files.

On June 12, 2021, the Claimant's attorney filed with the Commission a motion to be relieved as counsel of record. The Full Commission entered an order granting the motion for the Claimant's attorney to withdraw as counsel of record in this matter on July 1, 2021.

Since this time, there has been no action on the part of the Claimant to prosecute the within claim, or otherwise pursue benefits.

As a result, Respondents No.1 filed another Respondents' Motion to Dismiss with the Commission on July 6, 2021. Said motion included a Certificate of Service to the Claimant.

The Commission sent a notice of the Respondents No. 1's motion to the Claimant's last known address on July 7, 2021. Per this correspondence, a deadline of July 28, 2021 was given for filing a written response.

On July 12, 2021, the Claimant wrote a letter to the Commission stating, in relevant part, "... I do not want to pursue my claim." Said letter was filed marked with the Commission on July 15, 2021.

Therefore, pursuant to a Hearing Notice dated August 9, 2021, the Commission notified the parties that the matter had been set for a hearing on the motion to dismiss. Said hearing was scheduled for September 8, 2021, at 10:30 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock.

Information received by the United States Postal Service shows that they delivered this item via Certified Mail to the Claimant's last known address on August 23, 2021.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant did not appear at the hearing. The Trust Fund waived their appearance at the hearing. However, Respondents No. 1 appeared through their attorney.

Counsel essentially noted that the Claimant has elected not to pursue her claim for workers' compensation benefits. Therefore, counsel essentially moved that this claim be dismissed without prejudice pursuant to Ark. Code Ann. §11-9-704 and Commission Rule 099.13.

The Claimant has notified the Commission in writing that she has elected not to pursue her claim. Hence, the preponderance of the evidence shows that the Claimant has decided to abandon her claim for workers' compensation benefits. Therefore, I find that the dismissal of this claim is warranted, without prejudice, to the refile of it within the limitation period specified by law. Said dismissal is made pursuant to the provisions Arkansas Workers' Compensation Commission Rule 099.13. Having made this dismissal pursuant to Rule 099.13, I find that dismissal under the statute has been rendered moot.

**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 Arkansas Code Annotated. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant's filed three Form AR-Cs with the Commission alleging an injury date of November 21, 2018 for the same incident and alleged injuries. However, since this time, the Claimant's attorney has been relieved as counsel of record in this matter.
3. Respondents No. 1 accepted the claim and paid some benefits to and on behalf of the Claimant.
4. Since this time, the Claimant has failed to prosecute this claim for additional benefits.
5. Respondents No. 1 filed have filed a second Respondents' Motion to Dismiss in this matter.
6. The Claimant has notified the Commission, in writing, that she does not wish to pursue her claim.

7. Notice of the dismissal hearing was had on all the parties in the manner mandated by law.
8. Respondents No. 1's motion to dismiss is granted; this claim is hereby dismissed, without prejudice pursuant to Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Workers' Compensation Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

**IT IS SO ORDERED.**

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