

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: G904105

EARTHA HAWKINS, EMPLOYEE	CLAIMANT
TEXARKANA SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED SEPTEMBER 16, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on September 14, 2022, in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Specifically, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to promptly prosecute it pursuant to the provisions of Ark. Code Ann. §11-9-702 (d) (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

Reasonable notice of the dismissal hearing was tried on all parties in the manner prescribed by law.

The record consists of the hearing transcript from September 14, 2022. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by

reference. Also, the Respondents introduced into evidence a Respondents' Hearing Exhibit Index consisting of six numbered pages, which has been marked as Respondents' Exhibit 1.

No testimony was taken at the hearing.

### **Procedural Background**

The Claimant's attorney filed a Form AR-C with the Commission in the above-styled claim on June 28, 2019. Per this document, the Claimant asserted that she sustained an accidental injury while working for the respondent-employer January 31, 2019. Specifically, the Claimant asserted in this document that she tripped over a cord and fell on her face. This caused injuries to her lower back and head, fractured her right thumb and other whole body. At that time of the filing of the Form AR-C, an attorney represented the Claimant. Pursuant to this document, the Claimant requested both initial and additional benefits; and checked all of the boxes for these benefits.

On or about July 2, 2019 the Respondents filed a Form AR-2 with the Commission accepting this as a "medical only" claim.

Since the filing of the Form AR-C in June 2019, there has been no action taken on the part of the Claimant to prosecute her claim for workers' compensation benefits.

Of note, on January 5, 2021, Claimant's attorney filed a second Form AR-C, which is identical to the first form for the same incident for the sole purpose of preserving the statute of limitations.

Yet, there was no action taken on the part of the Claimant to prosecute, resolve, or pursue her claim.

However, on June 5, 2021, the Claimant's attorney filed with the Commission a formal request to withdraw from representing the Claimant in this workers' compensation claim. On June

17, 2021 the Full Commission entered an order granting the motion for the Claimant’s attorney to withdraw from representing her in this matter.

Thus far, there has been no bona fide undertaking of any kind on the part of the Claimant to resolve or otherwise pursue her claim.

Therefore, on July 19, 2022<sup>1</sup>, the Respondents filed with the Commission a letter motion to dismiss this claim due to a lack of prosecution by the Claimant. The Respondents served a copy of the foregoing pleading on the Claimant by depositing a copy of it via the United States Postal Service.

Subsequently, on July 21, 2022, I sent a letter to the Claimant informing her of the motion, with a deadline of August 9, 2022 for filing a written objection. On July 23, 2022 the Postal Service returned this parcel of mail to the Commission marked “Unclaimed.”

On August 10, 2022, the Commission issued a Notice of Hearing, which was sent via certified mail to the parties letting them know that a hearing on the Respondents’ motion for dismissal was scheduled for September 14, 2022. Based on information received from the Postal Service, the Notice of Hearing mailed to the Claimant is in transit back to the Commission because it too has been “unclaimed.”

Nevertheless, said hearing was in fact conducted on the Respondents’ motion to dismiss as scheduled. The Claimant did not appear at the hearing to object to her workers’ compensation claim being dismissed. However, the Respondents’ attorney appeared for the hearing. During the hearing, counsel moved that this claim be dismissed without prejudice due to the Claimant’s failure to pursue it. Counsel specifically asked that the dismissal be made under Ark. Code Ann. §11-9-702 and Commission Rule 099.13. The applicable law and Commission Rule are set forth below.

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<sup>1</sup>Although the letter motion bears a date of December 7, 2021, this is a clerical error, as the letter was filed marked by the Commission as being received on “July 19, 2022.”

### **Discussion**

In that regard, Ark. Code Ann. §11-9-702 (d) (Repl. 2012) provides:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the record shows that more than six (6) months have elapsed since the filing of the Form AR-Cs in this claim for workers' compensation benefits. However, since this time, the Claimant has failed to make a bona fide request for a hearing with respect to this claim. Additionally, the Claimant also did not appear at the hearing to object to the dismissal of her claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss this claim is called for under Ark. Code Ann. §11-9-702 (d) (Repl. 2012) and Commission Rule 099.13. Consequently, this claim is respectfully dismissed without prejudice, to the refiling 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. Reasonable notice of the dismissal hearing was attempted on all the parties in the manner prescribed by law.
3. The evidence preponderates that the Respondents' motion to dismiss due to a want of prosecution is warranted.
4. That the Respondents' motion to dismiss is hereby granted pursuant Ark. Code Ann. §11-9-702 (d) (Repl. 2012) and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

Based on the foregoing findings of fact and conclusions of law, this claim is respectfully dismissed without prejudice under Ark. Code Ann. §11-9-702 and Rule 099.13, to the refiling of it within the limitation period specified by law.

**IT IS SO ORDERED.**

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