

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H004163**

**WINDY HEITMAN,
EMPLOYEE**

CLAIMANT

**BAPTIST HEALTH SYSTEM, SELF-INSURED/
EMPLOYER**

RESPONDENT

CLAIMS MG'T SERVICES, INC./TPA

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED FEBRUARY 9, 2021**

Hearing conducted on Tuesday, February 9, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Windy Heitman, *pro se*, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondent was represented by the Honorable Melissa Wood, Worley, Wood & Parrish, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, February 10, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Replacement). On November 3, 2020, the respondent filed a motion to dismiss for failure to prosecute with the Commission. On November 23, 2021, the claimant's attorney at the time, Mr. George Bailey, filed a reply and objection to the respondent's motion. On January 21, 2021, Mr. Bailey filed a motion to withdraw and petition to be relieved as the claimant's counsel with the Commission. By order filed February 2, 2021, the ALJ granted Mr. Bailey's motion to withdraw as claimant's counsel, and scheduled a hearing on the respondent's motion to dismiss.

In accordance with the applicable Arkansas law, the claimant was mailed due and legal notice of the respondent's motion to dismiss, as well as a copy of the hearing notice, via United States Postal Service (USPS) First Class Certified Mail, Return Receipt Requested. The claimant failed and/or refused to file any response to the respondent's motion to dismiss, either via email, USPS, or any other medium of communication. She also failed and/or refused to appear at the hearing, or to cause anyone to appear on her behalf.

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 respondent's motion to dismiss. 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.

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. The claimant failed and/or refused to either file a response to the respondent's motion to dismiss, or to appear at the hearing. Consequently, she is deemed to have waived her appearance and right to the hearing on the respondent's motion.
3. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute her claim.

4. Therefore, the respondent's motion to dismiss without prejudice filed November 3, 2020, is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and 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 respondent hereby is 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