

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G905672

SIOMARA HERNANDEZ-RAMIREZ, Employee	CLAIMANT
TYSON POULTRY, Employer	RESPONDENT
TYNET CORPORATION, Carrier/TPA	RESPONDENT

OPINION/ORDER FILED JANUARY 5, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

OPINION/ORDER

This case comes on for review following a hearing on respondent's Motion to Dismiss.

On January 9, 2020, claimant's attorney filed an AR-C requesting various compensation benefits. On November 16, 2020, respondent filed a Motion to Dismiss requesting that this claim be dismissed for lack of prosecution. On November 23, 2020, a Notice of Hearing was mailed to the parties notifying them that a hearing was scheduled for December 15, 2020. The claimant's notice was mailed to her at her last known mailing address by certified and regular mail.

Claimant's attorney indicated that the claimant would like to move forward with a hearing request but is unable to move forward with the prosecution at this time and is unable to say when that will occur.

Following is a portion of claimant's attorney's argument to the Commission:

Ms. Brooks: Thank you, Judge. Indeed, we had filed a claim and asked for a hearing in January of this year in the COVID delays, Your Honor, not only for litigation but also for medical treatment. She had trouble getting testing that she needs. She does not have insurance at this time., and she does wish to pursue the claim, but she is just in a hard spot because she is not able to get the medical treatment that she needs to be able to move forward with the hearing request. She does intend to do so as soon as possible."

Despite the claimant’s argument, respondent contends that dismissal of this claim without prejudice is appropriate under Commission Rule 99.13 and/or Arkansas Code Annotated §11-9-702(a)(4).

Commission Rule 099.13 states:

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.

Additionally, Arkansas Code Annotated §11-9-702(a)(4) states:

If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

The claimant has a duty to move forward and prosecute her claim in a timely manner and here has failed to do so.

After my review of respondent’s Motion to Dismiss, the claimant’s response thereto, and all other matters properly before the Commission, I find that respondent’s Motion to Dismiss this claim should be and hereby is granted pursuant to Commission Rule 099.13. This dismissal is without prejudice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE