

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H000162

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

OPINION/ORDER FILED JUNE 21, 2022

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.

It should be noted that this matter has previously been before the Commission on a Motion to Dismiss filed by the respondent on August 5, 2020 which resulted in an Opinion/Order filed October 16, 2020, dismissing this claim without prejudice. In that opinion, it was noted that claimant filed an AR-C on October 21, 2019 requesting compensation benefits and that while claimant objected to the dismissal of the claim in that she had been unable to afford testing to move her case forward, I granted the respondent's motion and dismissed the claim without prejudice.

Claimant's attorney refiled an AR-C on September 27, 2021, but noted that claimant was not requesting a hearing at that time. Thereafter, on March 31, 2022, respondent filed its Motion to Dismiss contending that the claimant has had a reasonable time to move forward with her claim but has failed to do so. A hearing on respondent's Motion to Dismiss was originally

scheduled for May 17, 2022, but was reset for June 7, 2022. Both notices were sent to the claimant by certified mail, return receipt requested, and both notices were returned by the United States Post Office with the notation, “Return to Sender. Unclaimed. Unable to Forward.” Claimant did not appear at the scheduled hearing. Claimant’s attorney did appear at the hearing and set forth her objection to the respondent’s Motion to Dismiss. Ms. Brooks indicated that claimant had a second ongoing file which had recently gone through the appeal process, and that claimant was pursuing that claim before proceeding with the claim at hand. Ms. Brooks further objected to the dismissal on the grounds that in effect a dismissal would be with prejudice since the date of injury was in October 2019.

This claim deals with an injury date of October 21, 2019. It was previously dismissed on October 16, 2020, and a subsequent AR-C was filed with the Commission on September 27, 2021. Certainly, more than six months has passed since the refiling of the Form AR-C and claimant has yet to move her case forward to a hearing. The claimant has an obligation to provide the Commission and her attorney with a current address where she can be reached. Notices sent to her last known address have both been returned as unclaimed, unable to forward by the United States Post Office. Clearly, she has failed to stay in contact with her attorney and has failed to appear at the hearing to object to dismissal of her claim. I find the claimant has failed to meet her duty of prosecuting her claim in a timely manner.

After my review of respondent’s Motion to Dismiss, the claimant’s failure to keep the Commission and her attorney updated as to her current address and her failure to appear at the hearing, as well as 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.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE