

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO.: H208803

DEBORAH S. JOHNSON, EMPLOYEE	CLAIMANT
RECOVERY CENTERS OF ARKANSAS, EMPLOYER	RESPONDENT
ATA WORKERS' COMP. SI TRUST, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED JANUARY 30, 2024

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

The Claimant, pro se, did not appear at the hearing.

The Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes before the Commission pursuant to the Motion to Dismiss filed by the Respondents. A hearing on the motion was conducted before this Commission on November 15, 2023, in Little Rock, Arkansas. Thus, the sole issue for determination was whether this claim should be dismissed due to the Claimant's failure to prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The Claimant, per my review of Commission records is pro se, failed to appear at the hearing. The record consists of the November 15, 2023, hearing transcript. Also admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim,

consisting of eight numbered pages. Furthermore, in order to adequately address this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”), and without objection, I have blue-backed to the record forms, pleadings, and correspondence from the Commission’s file on the claim, consisting of twenty-seven pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, \_\_\_ S.W.3d \_\_\_, these documents have been served on the parties in conjunction with this opinion.

Reasonable notice of the dismissal hearing was had on all the parties in the manner set by law.

No testimony was taken at the hearing.

### **Background**

The record reflects the following procedural history:

The Claimant’s former attorney filed a Form AR-C with the Commission on December 19, 2022, asserting Claimant’s entitlement to workers’ compensation benefits. Per this document, the Claimant’s attorney described the cause of injury as follows: “Claimant was in the course and scope of employment and sustained injuries to her back and other whole body.” The date of the Claimant’s alleged accidental work-related injury is November 13, 2022. According to this document, the Claimant’s counsel check marked all the boxes for both initial and additional workers’ compensation benefits. However, there was no request for a hearing made by the Claimant’s attorney at that time.

On or about December 22, 2022, the Respondents filed a Form AR-2 with the Commission accepting limited liability in this claim. Specifically, the claims adjuster stated that this was a “medical only” claim as an aggravation of pre-existing back problems – MMI December 19, 2022.

The Claimant's former attorney requested to withdraw as counsel of record in this matter on August 31, 2023. The undersigned entered an order on September 13, 2023, granting the Claimant's attorney motion to withdraw from representing the Claimant in this claim.

Still, the Claimant has not attempted to pursue or otherwise resolve this claim for workers' compensation benefits since the filing of the Form AR-C in February 2023.

On September 18, 2023, the Respondents filed a Motion to Dismiss with the Commission accompanied by a certificate of service to the Claimant indicating that they served a copy of the pleading on the Claimant by depositing a copy thereof in the United States Mail.

The Commission sent a letter advising the Claimant of the Respondents' motion on September 18, 2023, which was certified mail and first-class mail. Per this letter, the Claimant was given twenty (20) days from the date of that letter to file a response to the motion.

The letter mailed to the Claimant by first class mail has not been returned to the Commission. However, the letter mailed to the Claimant by certified mail was picked up from a local Post Office on September 21, 2023, by the Claimant and the return receipt bears her signature.

Still, to date, there has been no response from the Claimant in this regard.

On October 12, 2023, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for November 15, 2023, on the Respondents' motion for dismissal.

Said notice was mailed to the Claimant by both certified and first-class mail.

Tracking information received by the Commission from the United States Postal Service on October 27, 2023, shows that the Hearing Notice sent by certified mail to the Claimant was returned to the Commission because they were unable to deliver it to her. However, the notice of hearing sent to the Claimant via first-class has not been returned to the Commission.

Yet, there was no response from the Claimant.

However, a hearing was in fact conducted on the Respondents' motion to dismiss as scheduled. The Claimant failed to appear at the hearing to object to the claim being dismissed. Nevertheless, the Respondents' attorney asked that the claim be dismissed under Ark. Code Ann. §11-9-702 and Commission Rule 099.13 due to the Claimant's failure to prosecute her claim for workers' compensation benefits.

Review of the evidence shows that the Claimant has failed to respond to the written notices of this Commission and did not appear at the hearing to object to the dismissal. Moreover, since the filing of the Form AR-C in December 2022, the Claimant has not requested a hearing. Considering the foregoing, I am persuaded to conclude that the Claimant has abandoned this claim for workers' compensation benefits.

Accordingly, 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 warranted under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission. Said dismissal is *without prejudice*, to the refiling of this claim within the limitation period specified by law.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the record, 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 authority of this claim.
2. The Claimant's former attorney filed a Form AR-C with the Commission in this matter in December 2022 asserting the Claimant's entitlement to workers' compensation benefits due to an accidental injury occurring at work on November 13, 2022.

3. Subsequently, the Claimant's attorney filed a motion to be relieved as counsel of record, which the Commission granted.
4. Since this time, and the filing of the Form AR-C, the Claimant has failed to make a bona fide request for a hearing in this matter.
5. The Respondents filed a Motion to Dismiss this claim with the Commission in September 2023.
6. Reasonable notice of the Motion to Dismiss and hearing thereon was had on all parties. The Claimant has failed to respond to the notices of this Commission and did not appear at the hearing to object to her claim being dismissed.
7. The evidence preponderates that the Respondents' motion for dismissal due to a lack of prosecution is warranted.
8. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13 *without prejudice*, to the refiling of the claim within the specified limitation period.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, this claim is hereby dismissed *without prejudice*, pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13 to the refiling of it within the time specified under the law.

**IT IS SO ORDERED.**

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