

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H006209**

**AMELIA B. KILLINGSWORTH,
EMPLOYEE**

CLAIMANT

**ADVANTAGES OF SOUTHEAST ARKANSAS, INC.,
EMPLOYER**

RESPONDENT

**ATA WORKERS' COMPENSATION
SELF-INSURED TRUST,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MARCH 10, 2022**

Hearing conducted on Thursday, March 10, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in El Dorado, Union County, Arkansas.

The claimant, Ms. Amelia B. Killingsworth, of Monticello, Drew County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by Ms. Melissa Wood, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Thursday, March 10, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Replacement) and Commission Rule 099.13 (2021 Lexis Repl.).

The respondents filed a motion to dismiss with the Commission on February 17, 2022, requesting this claim be dismissed without prejudice for lack of prosecution. In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice at her current addresses of record with the Commission via the United States Postal Service (USPS), First Class, Certified Mail, Return Receipt Requested. Thereafter, the claimant failed and/or refused to respond to the respondents'

motion in any way, or to cause anyone to do so on her behalf. Moreover, the claimant failed and/or refused to appear at the scheduled hearing.

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 respondents' 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 demonstrates 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. After having received due and legal notice of the respondents' motion to dismiss, and notice of the subject hearing, the claimant failed and/or refused to respond to the motion in any way. Moreover, the claimant failed and/or refused to appear at the hearing, or to cause anyone to appear on her behalf. Therefore, she is deemed to have waived her right to appear at the hearing, and to have waived objection to the respondents' motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to prosecute her claim. In addition, the claimant has failed and/or refused to request a hearing within the last six (6) months.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on February 17, 2022, should be and hereby is GRANTED; and

this claim 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 respondents shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp