

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H102826**

**MICHELLE LEGROS, EMPLOYEE**

**CLAIMANT**

**SARACEN CASINO RESORT, EMPLOYER**

**RESPONDENT**

**LUBA CASULATY INS. CO., CARRIER/TPA**

**RESPONDENT**

**OPINION FILED DECEMBER 7, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Pine Bluff, Jefferson County, Arkansas.

Claimant, Ms. Michelle Legros, *pro se*, failed to appear at the hearing.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on December 2, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the December 2, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated by reference. Respondents' exhibit packet was identified as Respondents' Exhibit #1 and consisted of the Form AR-C; the First Report of Injury; the Form AR-2; the Order granting Claimant's counsel's Motion to Withdraw; Respondents' Motion to Dismiss; Correspondence to Claimant regarding the Motion to Dismiss deadlines; and the October 29, 2021, Notice of Hearing. Exhibit #1 was admitted into evidence.

**DISCUSSION**

Claimant alleged that she sustained an injury to her left foot on November 1, 2020, while working for the Respondent-Employer. On March 22, 2021, Claimant's counsel of record at the time filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of November 1, 2020, and asserted her entitlement to initial and additional workers' compensation benefits. On the Form AR-C, Claimant's cause of injury was described as: "Claimant was working on her feet for 16 hours when she sustained an injury to her left foot and other whole body." Subsequently, there was no action taken by Claimant to prosecute her claim after the filing of the Form AR-C on March 22, 2021.

On March 24, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety. Per the Form AR-2, Respondents were not notified of a claim and an investigation was required.

On September 15, 2021, Claimant's attorney filed a Motion to Withdraw as Counsel, and on September 27, 2021, the Full Commission entered an Order granting Claimant's attorney's Motion to Withdraw.

On September 30, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute, along with a Certificate of Service to Claimant. On October 6, 2021, the Commission sent a Notice to Claimant advising her of Respondents' Motion and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated October 29, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for December 2, 2021, at 1:45 p.m., at the Federal Building

(Post Office Building), Room 3611, 100 East 8th Street, Pine Bluff, Arkansas. United States Postal Service records indicated that the Hearing Notice, sent via First-Class Mail and Certified Mail to Claimant's address, was returned to sender with the following notation "No mail receptacle; Unable to Forward." There was still no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss for Failure to Prosecute. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that it had been more than eight (8) months since Claimant filed a Form AR-C with the Commission, and since that time, Claimant had not sought any type of *bona fide* hearing before the Workers' Compensation Commission. As such, Counsel requested that the claim be dismissed, without prejudice, pursuant to Ark. Code Ann. § 11-9-702 and our Rule 099.13.

A review of the evidence shows that Claimant has had sufficient time to pursue her claim for workers' compensation benefits. It has been more than eight (8) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute her claim. Hence, Claimant has failed to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed, without prejudice, to the refiling within the applicable time period.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant alleged that she sustained an injury to her left foot on November 1, 2020, while working for Respondent-Employer.
3. On March 22, 2021, Claimant's counsel of record at the time filed a Form AR-C with the Commission seeking initial and additional workers' compensation benefits in this matter.
4. Subsequently, on March 24, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.
5. On September 30, 2021, Respondents filed with the Commission a Motion to Dismiss for Failure to Prosecute.
6. More than eight (8) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve her claim for workers' compensation benefits.
7. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of her claim, as she has failed to timely prosecute this matter.
8. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
9. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
10. Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of this claim within the applicable time period.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**