

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H101256**

**DIEDRA J. LEVI,
EMPLOYEE**

CLAIMANT

**CONWAY HOUSING AUTHORITY,
EMPLOYER**

RESPONDENT

**ARKANSAS WORKERS' COMPENSATION
MUNICIPAL LEAGUE WORKERS' COMPENSATION
TRUST/ARK. MUNICIPAL LEAGUE,
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED SEPTEMBER 28, 2022**

Hearing conducted on Wednesday, September 28, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Diedre J. Levi, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Mary K. Edwards, Attorney at Law, Arkansas Municipal League Workers' Compensation Trust, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday September 28, 2022, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.).

The respondents first filed a motion to dismiss with the Commission on May 9, 2022, requesting this claim be dismissed without prejudice for lack of prosecution (motion to dismiss). 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 via the United States Postal Service (USPS), First Class, Certified Mail, Return

Receipt requested, which she received on June 4, 2022. (Commission Exhibit 1; Respondents' Exhibit 1 at 9-10). The claimant initially objected to the respondents' motion to dismiss and requested a hearing, and the Commission held the respondents' motion in abeyance pending additional developments in the case or, alternatively, the lack thereof. V

Via an email dated June 13, 2022, the claimant withdrew her hearing request. Via email dated July 27, 2022, the respondents' renewed their motion to dismiss which they had originally filed on May 9, 2022. (RX1 at 12). Once again, the Commission provided the claimant with due and proper legal notice of both the claimant's renewed motion to dismiss, as well as of the subject Wednesday, September 28, 2022, hearing on the respondents' motion. (RX1 at 14). The claimant failed and/or refused to appear at the scheduled hearing, or to cause anyone to appear on her behalf.

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 withdrawn her hearing request, and 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' renewed motion to dismiss, as well as due and legal notice of the subject hearing, the claimant withdrew her hearing request, and failed and/or refused to appear at the subject 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(s) to the respondents' motion to dismiss without prejudice.
3. The claimant has to date failed and/or refused to prosecute her claim. In addition, based on the aforementioned facts, the claimant is deemed to have failed and/or refused to request a hearing within the last six (6) months.
4. Therefore, the respondents' motion to dismiss without prejudice they originally filed with the Commission on May 9, 2022, which the Commission initially held in abeyance after the claimant requested a hearing, which hearing request the claimant then withdrew on June 13, 2022, prompting the respondents to renew their motion to dismiss via email to the Commission dated July 27, 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