

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G903431**

**CAROLYN LEWIS (DECEASED),  
EMPLOYEE**

**CLAIMANT**

**UNIVERSITY OF ARKANSAS FOR  
MEDICAL SCIENCES,  
EMPLOYER**

**RESPONDENT**

**STATE OF ARKANSAS, PUBLIC EMPLOYEE  
CLAIMS DIVISION  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED SEPTEMBER 22, 2021**

Hearing conducted on Wednesday, September 22, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Carolyn Lewis (deceased), and/or her dependent(s), of Pine Bluff, Jefferson County, Arkansas, did not appear at the hearing.

The respondents were represented by the Honorable Charles H. McLemore, State of Arkansas, Public Employee Claims Division (PECD), Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Wednesday, September 22, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and Commission Rule 099.13 (2020 Lexis Replacement). On August 16, 2021, the respondents filed a motion to dismiss with the Commission, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant's dependent(s) was(were) mailed due and legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice, to the last known address(es) of record on file with the Commission. Thereafter, the claimant's

dependent(s) did not contact the Commission, nor did they file a response of any kind to the respondents' motion. In addition, the claimant's dependent(s) did not appear at the subject 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's dependent(s) have failed and/or refused to prosecute this 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, the claimant's dependent(s) did not respond to it in any way, nor did they appear at the subject hearing. Therefore, the claimant's dependent(s) are deemed to have waived his/her/their appearance at the hearing.
3. The preponderance of the evidence of record reveals the claimant's dependent(s) has(have) to date failed and/or refused to prosecute this claim, which was and remains controverted in its entirety.
4. Therefore, the respondents' motion to dismiss without prejudice filed with the Commission on August 16, 2021, is GRANTED; and this claim hereby is dismissed as to the respondents 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's dependent(s), his/her/their attorney, or any attorney he/she/they may retain in the future, or anyone else acting legally and on his/her/their 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 hereby are ordered to pay the court reporter's invoice within 20 days of its receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp