

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H004244**

**KATRINA LOVETT,
EMPLOYEE**

CLAIMANT

**L B AMFUEL, LLC,
EMPLOYER**

RESPONDENT

**WESCO INS. CO./
AMTRUST NORTH AMERICA,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE FILED JULY 12, 2021

Hearing conducted on Thursday, July 8, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in El Dorado, Union County, Arkansas.

The claimant, Ms. Katrina Lovett, of McNeil, Columbia County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by Mr. William C. Frye, Frye Law Firm, North Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Thursday, July 8, 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). The respondents filed a letter motion to dismiss with the Commission on May 4, 2021, requesting this claim be dismissed for lack of prosecution. The claimant was mailed and received – as is evidenced by her signature on the United States Postal Service (USPS) certified mail return receipt – a copy of the respondents' letter motion to dismiss, as well as a copy of the hearing notice, in advance of the hearing in accordance with applicable Arkansas law. (Commission Exhibit 1).

Thereafter, the claimant did not file with the Commission a response to the respondents' letter motion to dismiss either via letter, email, or any other medium of communication. Moreover, the claimant did not appear at the hearing, or cause anyone to appear at the hearing on her behalf. According to the Commission's file the claimant did, however, contact the respondents' attorney's office on May 28, 2021. She advised she was not appearing for the hearing; and she had no objection to the claim's dismissal without prejudice to its refiling.

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) (2020 Lexis Supplement), 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 reveals the claimant has not prosecuted, and apparently does not intend to pursue 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. The claimant did not file with the Commission any response to the respondents' letter motion to dismiss filed May 4, 2021, nor did she appear at the subject hearing or cause anyone to appear at the hearing on her behalf. According to the Commission's file, on May 28, 2021, the claimant contacted the respondents' attorney's office and advised she was not appearing at the hearing, and she had no objection to the claim's dismissal so long as the dismissal was without prejudice to its refiling. Consequently, the claimant is deemed to have waived her appearance at the hearing.

3. The preponderance of the evidence of record conclusively demonstrates the claimant has to date failed and/or refused to prosecute her claim within the last six (6) months. Moreover, the claimant does not object to her claim's dismissal, so long as the dismissal is without prejudice to its refiling if and when the need arises.
4. Therefore, for all the reasons set forth in the immediately preceding Paragraphs 1., 2., and 3., *supra*, I find the respondents' letter motion to dismiss filed with the Commission on May 4, 2021, should be and hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to *Ark. Code Ann.* Section 11-9-704(a)(4), 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 twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp