

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H006269**

BETTY M. MERRITT, EMPLOYEE	CLAIMANT
MAPCO EXPRESS, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, INSURANCE COMPANY	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT

OPINION FILED JULY 1, 2021

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

The Claimant, pro se, not appearing.

Respondents represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 30, 2021, a hearing was held in the above referenced claim, pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether this claim should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702(d) (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the transcript of the June 30, 2021, hearing and the documents contained therein. The Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken during the hearing.

## DISCUSSION

The Claimant's former attorney of record at that time, filed a Form AR-C with the Commission on September 1, 2020. According to the Form AR-C, the Claimant's alleged accidental injury was described as: "Claimant was in the course and scope of employment when she lost her footing on a step ladder causing her to fall and catch herself. Claimant sustained injuries to her back, right shoulder, neck, right leg, and other whole body." Per the Form AR-C, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits.

On September 11, 2020, the Respondents filed a Form AR-2 with the Commission. Specifically, they wrote: "Accepted Medical Only RESPONSE TO AR C."

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits or otherwise pursue her claim for workers' compensation benefits.

Subsequently, on March 1, 2021, the Claimant's former attorney filed with the Commission, a motion to withdraw from representing the Claimant in this workers' compensation claim. Counsel noted that she had made numerous unsuccessful attempts to reach the Claimant via mail, email, and telephone. Per an order entered by the Full Commission on April 19, 2021, the Claimant's attorney was allowed to withdraw her representation of the Claimant in said claim.

Therefore, on or about April 30, 2021, the Respondents filed a Motion to Dismiss, along with a Brief in Support of Motion to Dismiss, along with a Certificate of Service to the Claimant.

The Commission sent a Notice to the Claimant's last known address, on May 7, 2021, letting her know about the Respondents' Motion, and a deadline of May 28, 2021, for filing a written response. As of June 29, 2021, information received by the Commission from the United

States Postal Service shows that they have been unable to locate any delivery information records on this item.

Nevertheless, there has been no response from the Claimant in this regard.

Therefore, in a Hearing Notice dated June 2, 2021, the Commission notified (by way of Certified Mail) the parties that the matter had been set for a hearing on the Respondents' Motion to Dismiss. This hearing was scheduled for June 30, 2021, at 11:30 a.m., in Little Rock, at the Arkansas Workers' Compensation Commission. Information received by the Commission from the United States Postal Service on June 29, 2021 states that they have been unable to locate any delivery information in their records for this item.

Still, there has been no response from the Claimant.

A hearing was in fact conducted on Respondents' Motion to Dismiss. The Respondents appeared for the hearing through their attorney. However, the Claimant did not appear at the hearing. Counsel for the Respondents' attorney essentially renewed their motion to dismiss this claim pursuant to Ark. Code Ann. §11-9-702(d) and Commission Rule 099.13 due to a lack of timely prosecution.

#### DECISION

The applicable law and Commission Rule are outlined below. Specifically, Ark. Code Ann. §11-9-702(d) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the evidence shows that the Claimant has had the opportunity to pursue her claim for workers' compensation benefits but has failed to do so. Hence, the Claimant has failed to request a hearing on the merits or otherwise pursue this matter since the filing of the Form AR-C. Reasonable notice of the dismissal hearing was attempted on the Claimant in the manner prescribed by law. However, the Claimant failed to respond to the Commission's Notices and did not appear at the scheduled hearing. Nor has the Claimant objected to her claim being dismissed.

Therefore, after careful consideration of the evidence presented, I find the Respondents' Motion to Dismiss to be well founded. Accordingly, pursuant to Ark. Code Ann. §11-9-702(d) and Rule 099.13, this claim is hereby dismissed without prejudice to the refiling within the limitation period specified by law.

**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 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about September 1, 2020, the Claimant's former attorney filed a Form AR-C with the Commission, alleging that her client sustained work-related injuries on April 22, 2020 during and in the course of her employment with the Respondents.
3. It has been more than six months since the filing of the Form AR-C, and the Claimant has failed to make a request for a hearing with respect to her claim.
4. On or about April 30, 2020, the Respondents filed with the Commission a Motion to Dismiss, along with a Brief in Support of Motion to Dismiss.
5. The Claimant has failed to respond to the Notice of this Commission and did not appear at the hearing to object to her claim being dismissed.
6. That dismissal of the within claim is warranted.
7. That the Respondents' Motion to Dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refile of the claim within the specified limitation period.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to grant the Respondents' Motion to Dismiss the within claim for workers' compensation benefits, arising out of the Claimant's accidental injury of April 22, 2020. Accordingly, this claim

Merritt – H006269

is hereby dismissed without prejudice to the refiling within the limitation period specified by law.

**IT IS SO ORDERED.**

---

**CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**

