

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H005466

ANTONIA MARTINEZ DE MONTOYA, Employee	CLAIMANT
CARGILL MEAT SOLUTIONS, Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, Carrier/TPA	RESPONDENT

OPINION/ORDER FILED SEPTEMBER 2, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant not represented by counsel and not appearing at hearing.

Respondent represented by LAURA J. PEARN, Attorney at Law, Fort Smith, Arkansas.

OPINION/ORDER

This case comes on for review following a hearing on respondents' Motion to Dismiss.

On November 19, 2020, claimant's previous attorney, Whitney James, filed a Form AR-C requesting various compensation benefits. Ms. James subsequently filed a Motion to Withdraw on January 15, 2021 and the Full Commission granted said motion on January 28, 2021. No further action has been taken by the claimant, and on May 28, 2021, respondents filed a Motion to Dismiss requesting that this claim be dismissed for lack of prosecution. A Notice of Hearing was mailed to the parties on June 14, 2021 notifying them that a hearing on respondents' Motion to Dismiss was scheduled for August 10, 2021. The claimant's notice was mailed to her by certified mail. The United States Postal Service proof of service log indicates the notice was received by claimant on June 17, 2021, at 2:12 p.m. Claimant failed to appear at the scheduled hearing.

At the time of the hearing this Administrative Law Judge introduced into evidence a letter that was received by a legal advisor in the Little Rock office dated August 6, 2021. The document was handwritten in Spanish, and translated by Carly Hays, Legal Advisor, and forwarded to my office on August 9, 2021. That document stated in part, "... I did not receive the treatment I needed, that's why I

don't want the case to be closed....” An off-the-record telephone conversation between myself and Legal Advisor Hays was held, during which Ms. Hays indicated that she had held numerous conversations with the claimant, as recently as the day before this hearing, and that it was her belief that the claimant intended to appear at the hearing. However, the claimant failed to appear at the scheduled hearing.

The respondents reiterated that since the filing of the Form AR-C, no further action has been taken to pursue this claim. Claimant has made no attempt to contact the adjuster and has failed to move forward with her claim, despite having had ample time to do so. Therefore, respondents request that the case be dismissed for failure to prosecute. I noted on the record that any decision in this matter would be withheld for twenty-one (21) days in order to allow claimant time to contact my office or provide documentation as to why she was unable to attend the scheduled hearing.

It should be noted that on August 25, 2021, a packet of information was sent directly to the court reporter by the claimant which included various medical documents, bills, and forms as well as a handwritten letter. That letter was written in Spanish, and was sent to Legal Advisor Hays for translation. Ms. Hays made use of Google translate, and furnished an interpretation of the claimant's handwritten letter that has been blue-backed and made a part of the record in this matter. The letter in part states, “I have the honor of writing to you to ask for your help in this case because I cannot be in court when it was carried out because I do not want to remember again all the humiliation that happened in that place where my first job was....” The remaining documents have been returned to the claimant and have not been considered for purposes of this opinion. The claimant failed to appear at the scheduled hearing, and her personal emotions regarding her claim in this matter are not valid reasons for willfully refusing to attend a hearing scheduled by the Commission.

After my review of respondents' Motion to Dismiss, the claimant's lack of response thereto and her failure to appear at the scheduled hearing, as well as all other matters properly before the Commission, I find that respondents' Motion to Dismiss this claim should be and hereby is granted pursuant to Commission Rule 099.13. This dismissal is without prejudice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE