

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H402792**

**JESSICA MCCULLOUGH,
EMPLOYEE**

CLAIMANT

**LITTLE CEASARS PIZZA,
EMPLOYER**

RESPONDENT

**BRIDGEFIELD CASUALTY INS. CO.,
CARRIER**

RESPONDENT

**SUMMIT CONSULTING, LLC,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED NOVEMBER 1, 2024

Hearing conducted on Friday, October 11, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Ms. Jessica McCullough, *Pro Se*, of Blytheville, Arkansas.

The Respondents were represented by the Honorable Jason M. Ryburn, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on October 11, 2024, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as an assistant manager. The date for Claimant's alleged injury was on November 1, 2022. She reported her injury to Respondent/Employer on April 30, 2024. Admitted into evidence was Respondents Exhibit 1, Form AR-C, Motion to Withdraw, and Order, consisting of four pages. I have also blue-backed Form AR-1, a certified returned receipt dated August 9, 2024 and certified returned receipt dated September 5, 2024, *as discussed infra*.

The record reflects on April 26, 2024, a Form AR-C was filed with the Commission through Claimant's then-attorney, Mark Peoples, purporting alleged injuries to her hand, wrist, arm, and elbow.

On May 2, 2024, a Form AR-1 was filed in this case, reflecting that Claimant purportedly reported these injuries to Respondent/Employer on April 30, 2024. Respondents on May 2, 2024, filed a Form AR-2, challenging the compensability of Claimant's alleged injuries. In short, this report alleges that Claimant's injury doesn't meet the statutory definition of accident. Attorney Jason Ryburn entered his appearance on behalf of the Respondents on May 3, 2024. Attorney Peoples filed a Motion to Withdraw as Counsel on July 1, 2024, that was granted on July 24, 2024.

The Respondents next filed a Motion to Dismiss on July 29, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent, certified and regular U.S. Mail, notice of the Motion to Dismiss from my office on August 5, 2024, to her last known address. The certified notice was claimed by Claimant on August 9, 2024. Claimant did not respond to the notice in writing as required. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of Respondents' Motion to Dismiss hearing date at her current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail, on September 3, 2024. The certified hearing notice was claimed by Claimant on September 5, 2024. The hearing took place on October 11, 2024. As mentioned before, the Claimant did not show up to the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the October 11, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.

5. This claim is hereby dismissed without prejudice.

DISCUSSION

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with proper notice, on the Respondents' Motion to Dismiss. The certified hearing notice was claimed by Claimant on September 5, 2024. Respondent's counsel was present and argued the motion. Thus, I find by the preponderance of the evidence that reasonable notice was given to both parties.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant filed her Form AR-C on April 26, 2024. Since then, Claimant has not made a demand for a hearing or has taken any other action in furtherance of this claim. In this regard, the Claimant has failed to do the bare minimum in prosecuting her claim. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim. Thus, Respondents' Motion to Dismiss should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted without prejudice.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge