

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H206824**

**MALLORY MORROW,
EMPLOYEE**

CLAIMANT

**BAPTIST MEMORIAL CRITTENDEN,
SELF-INSURED EMPLOYER**

RESPONDENT

**BRENTWOOD SERVICES ADMINISTRATORS, INC.,
THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED MAY 30, 2024

Hearing conducted on Wednesday, May 3, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Forrest City, St. Francis County, Arkansas.

The Claimant, Ms. Mallory K. Morrow, *pro se*, of Wynne, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Jacob Swatley of Memphis, Tennessee.

BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing was conducted on May 3, 2024, in Forrest City, 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 a registered nurse. The Claimant allegedly contracted COVID-19 while working in the emergency room for Respondent/Employer on October 17, 2020. She reported this injury to Respondent/Employer on October 3, 2022. Admitted into evidence was Commission Exhibit 1, correspondence, and Certified U.S. Mail return receipts, consisting of nine pages. I have also blue-backed Form AR-1, Form AR-2, and Form AR-C, *as discussed infra*.

The record reflects on September 21, 2022, a Form AR-C was filed with the Commission. On October 4, 2022, a Form AR-1 was filed in this case, reflecting that Claimant purportedly contracted COVID-19 while working in the emergency room for the Respondent/Employer on October 17, 2020. Respondents on October 4, 2022, filed a Form AR-2, representing that Claimant did not contract COVID-19 during the course and scope of her employment. Attorney J. Matthew Kirby entered his appearance for Respondents, via letter, on October 11, 2022. That entry letter further stated that Respondent/Employer did not receive timely notice of alleged injury.

On February 14, 2023, the Claimant requested a hearing via email. Both parties agreed to mediation by conference call on March 8, 2023, but did not reach a resolution. Respondents' counsel then filed a Motion to Dismiss on February 26, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent a certified notice of the Motion to Dismiss to her last known address of record on March 4, 2024. The certified notice was unclaimed. The same notice was also sent regular First-Class mail on the same day and was likewise returned to the Commission. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of the Motion to Dismiss hearing 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. The certified hearing notice was unclaimed by the Claimant; and the hearing notice sent regular First-Class Mail was return to the Commission. The hearing took place on May 3, 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 May 3, 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. Commission Exhibit 1 provides multiple Certified U.S. Mail Return Receipts. Neither receipt was claimed by the Claimant; and all notices sent to Claimant's last known address via regular First-Class mail were returned to the Commission. It is the responsibility of the Claimant to provide the Commission with her proper address along with any updates thereafter. I find the Claimant did not provide the Commission with an updated address. Thus, I find by the preponderance of the evidence, based on my review of the Commission's file, that reasonable notice was given to the Claimant.

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 and Respondents entered mediation on March 8, 2023, with no resolution. Since then, Claimant has taken no action in

furtherance of the prosecution of this claim. The Claimant has failed to provide the Commission with an updated address. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim. And as a result, 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 granted and this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge