

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H100359**

**MALLORY M. NEWSOME, EMPLOYEE**

**CLAIMANT**

**STAFFMARK INVESTMENTS, LLC, EMPLOYER**

**RESPONDENT**

**ACE AMERICAN INSURANCE CO./ESIS, INC.,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 3, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant, Ms. Mallory Newsome, *pro se*, failed to appear at the hearing.

Respondents were represented by Mr. Joseph Purvis, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on September 2, 2021, in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. § 11-9-702 (Repl. 2012) and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was had on all parties to their last known address in the manner prescribed by law.

The record consists of the transcript of the September 2, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record.

It is hereby incorporated by reference.

**DISCUSSION**

Claimant alleges that on December 2, 2020, she sustained an injury to her low back while working for Respondent-Employer. On January 11, 2021, Claimant filed a Form AR-C with the Commission. Per this form, Claimant asserted an accident date of December 2, 2020, and asserted her entitlement to initial workers' compensation benefits. Subsequently, there was no action taken by Claimant to prosecute her claim after the filing of the Form AR-C on January 11, 2021.

On January 13, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was denied as the incident/injury did not meet the criteria for a workers' compensation claim.

On July 19, 2021, Respondents filed with the Commission a Motion to Dismiss, along with a Certificate of Service to Claimant. On July 21, 2021, the Commission sent notice of the Motion to Dismiss to Claimant via First-Class Mail and Certified Mail to Claimant's address. United States Postal Service records demonstrate that they were unable to deliver this parcel of mail to Claimant. Specifically, this notice was returned to the Commission by the Post Office marked, "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." There was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated August 18, 2021, the Commission advised the parties that the matter had been set for a hearing on Respondents' Motion to Dismiss for Failure to Prosecute. Said hearing was scheduled for September 2, 2021, at 12:30 p.m., at the Arkansas Workers' Compensation Commission, Hearing Room "A," Third Floor, 324 S. Spring Street, Little Rock, Arkansas. That communication was also sent via First-Class Mail and Certified Mail to Claimant's address. Again, information obtained by the Commission from the United States Postal Service demonstrates that they were unable to deliver this parcel of mail to Claimant, and it was

returned to the Commission by the Post Office marked, "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on Respondents' Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing.

Counsel advised that Claimant filed a Form AR-C on January 11, 2021, alleging a work injury on December 2, 2020. Counsel noted that Claimant had continued to work a full month after the alleged low back injury of December 2, 2020; that Claimant had not reported the alleged low back injury to Respondent-Employer; and that Claimant had not received any medical treatment for her alleged low back injury. Since the filing of the Form AR-C on January 11, 2021, Claimant had not responded to inquiries or notices regarding her case, and she had not sought any type of *bona fide* hearing before the Workers' Compensation Commission. As such, Counsel requested that the claim be dismissed, with prejudice, pursuant to Ark. Code Ann. § 11-9-702.

As shown by the evidence recounted above, (1) reasonable notice of the motion to dismiss was attempted on the parties of the hearing; and (2) Claimant has failed to pursue her claim because she has taken no *bona fide* action in pursuit of it in more than seven (7) months (including appearing at the September 2, 2021, hearing to argue against its dismissal) since the filing of the Form AR-C on January 11, 2021. Thus, the evidence preponderates that dismissal is warranted under both Ark. Code Ann § 11-9- 702 (Repl. 2012) and the Commission's Rule 099.13. That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. Loosey v. Osmose Wood Preserving Co., 23 Ark. App. 137, 744 S.W.2d 402 (1988). In Abo v. Kawneer Co., 2005 AWCC 226, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission

wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice.” (citing Professional Adjustment Bureau v. Strong, 275 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal with prejudice. However, based on the above authorities, I find that the dismissal of this claim should be and hereby is entered without prejudice, to the refiling of it within the limitation period specified by law.

Therefore, after consideration of the evidence presented, I find Respondents’ Motion for the dismissal of this claim to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for additional benefits should be dismissed without prejudice to the refiling within the applicable time period.

**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. Claimant alleged that on December 2, 2020, she sustained an injury to her low back while working for the Respondent-Employer.
3. On January 11, 2021, Claimant filed a Form AR-C with the Commission seeking initial workers’ compensation benefits in this matter.
4. Subsequently, on January 13, 2021, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission denying the claim in its entirety.
5. On July 19, 2021, Respondents filed with the Commission a Motion to Dismiss with prejudice.
6. More than seven (7) months have passed since Claimant filed a Form AR-C, with the Commission. However, since this time, Claimant has failed to make a *bona fide* request for a hearing or otherwise resolve her claim for workers’ compensation benefits.

7. Respondents' Motion to Dismiss for Failure to Prosecute is well founded.
8. Respondents' Motion to Dismiss for Failure to Prosecute should be granted pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice, to the refiling of the claim within the applicable time period.
9. Appropriate Notice of this hearing was had on all parties to their last known address, in the manner prescribed by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Ark. Code Ann. § 11-9-702, and Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

**IT IS SO ORDERED.**

\_\_\_\_\_  
**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**