

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H105783**

**KAREL ORTEGA,  
EMPLOYEE**

**CLAIMANT**

**ARKANSAS PUBLIC DEFENDER COMMS'N,  
EMPLOYER**

**RESPONDENT**

**STATE OF ARKANSAS/  
PUBLIC EMPLOYEE CLAIMS DIVISION  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER FILED JULY 26, 2023  
HOLDING RESPONDENTS' MOTION TO DISMISS WITHOUT PREJUDICE IN  
ABEYANCE FOR 30 DAYS**

Hearing conducted on Tuesday, July 25, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Karel Ortega, pro se, of Maumelle, Pulaski County, Arkansas, appeared in person at the hearing.

The respondents were represented by the Honorable Charles McLemore, Public Employee Claims Division, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Tuesday, July 25, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2023 Lexis Replacement) and Commission Rule 099.13 (2023 Lexis Repl.). The respondents filed a motion to dismiss with the Commission on May 4, 2023, requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of both the respondents' motion to dismiss as well as a copy of the hearing notice at her current addresses of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, which she received on May 8, 2023. (Commission Exhibit 1). The claimant appeared at the hearing pro se.

The claimant filed a Form AR-C on August 2, 2021, alleging she had sustained a work-related lower back injury on April 22, 2021. The respondents controverted the claim in its entirety, so they have paid no medical or indemnity benefits. The claimant had been represented in this matter by attorney Gregory R. Giles; however, by a letter he filed with the Commission on January 3, 2023, Mr. Giles made a motion requesting to be relieved as the claimant's counsel. The Full Commission granted Attorney Giles's letter motion by order filed January 18, 2023.

In response to the respondents' motion to dismiss this claim for lack of prosecution the claimant testified she had not requested a hearing since the Full Commission relieved Mr. Giles as her attorney because she had been occupied taking care of her mother, who is ill. The claimant apparently continued to work following her alleged April 22, 2021, lower back injury. She testified she quit her job earlier this summer in order to take care of her mother. The claimant testified she believed the last time she had received any treatment for her alleged April 22, 2021, work-related injury was some time in the winter of 2022, when she received an injection. It was her understanding she could not receive any further injections. She testified she had been paying for her medical treatment for her alleged April 22, 2021, lower back injury through her health insurance, but she had incurred co-pays and other related expenses and paid those out of her own pocket.

The record herein consists of the hearing transcript as well as any and all exhibits contained therein and attached thereto and, as always, the Commission's entire file in this matter by reference.

### **DISCUSSION**

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the respondents' motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively demonstrates the claimant has neither requested a hearing nor has he taken any action to pursue claim as of the hearing date.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, and as I advised the parties on the record at the hearing, I hereby make the following:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this claim.
2. The ALJ will hold in abeyance a decision on the respondents' subject motion to dismiss without prejudice for a period of 30 days, or until Thursday, August 24, 2023, in order to give the claimant time to find an attorney to represent her, or to decide whether she intends to proceed with this matter pro se (representing herself), and to request a hearing on the compensability of her claim.
3. If the claimant fails and/or refuses to take the actions set forth in Paragraph 2 above, and does not request, in writing, a hearing before the Commission on or before Thursday, August 24, 2023, the respondents' motion to dismiss without prejudice for lack of prosecution filed May 4, 2023, will be granted, without the necessity of either the respondents filing another motion, and without the necessity of the Commission holding another hearing on the subject motion.

If they have not already done so, the respondents shall pay the court reporter's invoice within

twenty (20) days of the filing of this opinion and order.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp