

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H300349**

**KATHLEEN R. OVIEDO,
EMPLOYEE**

CLAIMANT

**SAFEWAY VAN LINES, LLC,
EMPLOYER**

RESPONDENT

**WESCO INS. CO./
AMTRUST NORTH AMERICA
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MARCH 12, 2024**

Hearing conducted on Friday, March 8, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Hot Springs, Garland County, Arkansas.

The claimant, Ms. Kathleen R. Oviedo, pro se, of Hot Springs, Garland County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable William C. Frye, Frye Law Firm, North Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Friday, March 8, 2024, 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 Replacement).

The respondents filed a letter motion to dismiss (MTD) without prejudice with the Commission on December 21, 2023, requesting this claim be dismissed without prejudice for lack of prosecution. Consistent with the applicable Arkansas law, the Commission mailed a copy of both the respondents' motion to dismiss and the subject hearing notice via the United States Postal Service (USPS), Certified Mail, Return Receipt Requested by letter dated January 2, 2024, to her last known address of record with the Commission. Thereafter, the claimant failed and/or refused

to respond in any way to either the Commission or the respondents; and she failed and/or refused to appear at the subject hearing. The claimant never objected in any way to the respondents' MTD.

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

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Repl.), 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 parties' joint MTD. 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 both failed and/or refused to prosecute her claim, nor has she requested a hearing within the last six (6) months.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After the Commission mailed due and legal notice of the respondents' letter MTD filed December 21, 2023, to the claimant's last known address of record with the Commission, the claimant failed and/or refused to object to the subject MTD; to request a hearing; or to respond to the motion in any way.
3. The claimant failed and/or refused to appear at the subject hearing and, therefore, has waived her right to a hearing on the MTD.
4. The claimant has failed to request a hearing on the merits of her claim within the last six (6) months.
5. The respondents' letter MTD without prejudice filed with the Commission on December 21, 2023, should be and hereby is GRANTED.

6. Therefore, this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone acting legally and on her behalf from refiling this claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

The respondents shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp