

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H004938**

**DEWANNA J. RAMSEY, EMPLOYEE**

**CLAIMANT**

**KOHLER CO., EMPLOYER**

**RESPONDENT**

**GALLAGHER BASSETT SERVICES, INC.,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 4, 2021**

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

Claimant, Ms. Dewanna J. Ramsey, *pro se*, failed to appear at the hearing.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on April 6, 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, 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 April 6, 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 herein by reference. The Certified Mail return receipt was made a part of the record and marked as Commission's Exhibit 1. Respondents' exhibit packet was also made a part of the record and marked as Respondents' Exhibit 1. The packet consisted of the Form AR-N, the First Report of Injury document, the Form AR-C, the Motion to Dismiss, the correspondence

to Claimant regarding Respondents’ Motion to Dismiss, and the correspondence to Claimant regarding the Hearing Notice.

**DISCUSSION**

On July 27, 2020, Claimant filed a Form AR-C with the Commission.<sup>1</sup> Per this form, Claimant alleged that she sustained a compensable injury to her left shoulder on July 22, 2018, while working for Respondent-Employer. Specifically, the following description was stated for Claimant’s accidental injury: “Slipped on a metal ramp. My feet went out from under me[,] and I came down with the left side hitting the machine. Left shoulder was injured.” Per the Form, Claimant asserted her entitlement to additional medical expenses and rehabilitation.

On August 3, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. The claim was accepted as a medical only claim.

Subsequently, there was no action taken by Claimant to prosecute her claim after the filing of the Form AR-C on July 27, 2020.

Therefore, on January 26, 2021, Respondents filed a Motion to Dismiss for failure to prosecute and a Certificate of Service to Claimant. On January 28, 2021, the Commission sent a Notice to Claimant advising her of Respondents’ Motion to Dismiss and a deadline for filing a written response. However, there was no response from Claimant regarding this correspondence.

Pursuant to a Hearing Notice dated February 23, 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 April 6, 2021, at 10:00 a.m., at the Arkansas Workers’ Compensation Commission, Hearing Room “B,” 324 S. Spring Street, Little Rock, Arkansas.

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<sup>1</sup> Claimant previously filed a Form AR-C on July 23, 2020; however, that form reflected an accident date of July 22, 2020. When Claimant filed a second Form AR-C on July 27, 2020, the accident date was amended, and Claimant initialed the correction. The subsequent Form AR-C reflected an accident date of July 22, 2018.

United States Postal Service records indicated that the Hearing Notice was sent via First-Class Mail and Certified Mail to Claimant's address. It was delivered on February 27, 2021, at 1:23 p.m., and a signature was obtained. Still, there was no response from Claimant in this regard.

Therefore, a hearing was in fact conducted as scheduled on the Respondents' Motion to Dismiss. Respondents appeared through their attorney; however, Claimant failed to appear at the hearing. At the hearing, Respondents' attorney advised that the carrier accepted the claim as a medical only claim; that all medical bills had been paid; that Claimant last underwent medical treatment in September of 2018; and that Claimant was ultimately released at full duty without an impairment rating. Lastly, Counsel advised that since the filing of the Form AR-C on July 27, 2020, Claimant had failed to take any action to pursue her claim for workers' compensation benefits. As such, Counsel requested that the motion be granted.

A review of the evidence shows that Claimant has had sufficient time to pursue her claim for workers' compensation benefits. It has been more than nine (9) months since Claimant filed a Form AR-C in this matter, and to date, Claimant has not requested a *bona fide* hearing or otherwise attempted to prosecute her claim. Hence, Claimant has failed and/or refused to timely prosecute her claim for workers' compensation benefits.

Therefore, after consideration of the evidence presented, I find Respondents' Motion Dismiss to be well supported. Furthermore, I find that pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13, this claim for 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.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 27, 2020, Claimant filed a Form AR-C with the Commission. Per this form, Claimant alleged that she sustained a compensable injury to her left shoulder on July 22, 2018, while working for Respondent-Employer.
3. On August 3, 2020, Respondent-Insurance-Carrier filed a Form AR-2 with the Commission. They accepted the claim as a medical only claim.
4. More than nine (9) months have passed since Claimant filed a Form AR-C with the Commission. Since this time, Claimant has failed to make a *bona fide* request for a hearing or otherwise pursue her claim for workers' compensation benefits.
5. On January 26, 2021, Respondents filed a Motion to Dismiss for failure to prosecute.
6. Claimant has had ample opportunity to pursue this claim for workers' compensation benefits, but no action has been taken by Claimant in furtherance of her claim, as she has failed to timely prosecute this matter.
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**

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 applicable time period.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**