

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G608773**

<b>SOUNIA J. REEVES, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>TEXARKANA SCHOOL DISTRICT, EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>ARKANSAS SCHOOL BOARDS ASS'N WORKERS' COMPENSATION TRUST, INS CARRIER/TPA</b>	<b>RESPONDENT NO. 1</b>
<b>STATE OF ARKANSAS, DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT NO. 2</b>

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED SEPTEMBER 28, 2021**

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on Thursday, September 22, 2021, in Texarkana, Miller County, Arkansas.

The claimant, Ms. Sounia J. Reeves, of Texarkana, Miller County, Arkansas, appeared pro se.

Respondent No. 1 was represented by the Honorable Melissa Wood, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

Respondent No. 2 is represented by the Honorable Christy L. King, State of Arkansas, Commission Special Funds Division, Little Rock, Pulaski County, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on Thursday, September 22, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement) and/or Commission Rule 099.13 (2020 Lexis Repl.).

In an Opinion and Order filed December 19, 2018, the ALJ found, among other things, that the claimant had failed to meet her burden of proof in demonstrating she had sustained a compensable injury to her neck/cervical spine on August 17, 2016, which she alleged were causing her shoulder and arm pain. The ALJ found further the claimant failed to prove there exists any

causal connection between her August 17, 2016, work incident and her cervical degenerative disc disease, and her alleged disability and need for treatment of her continued neck and shoulder complaints. The claimant was represented by counsel at this time, and she did not appeal the ALJ's decision. Soon thereafter, the claimant's attorney requested the Commission allow him to withdraw as the claimant's counsel, and his request was granted.

On September 16, 2019, Respondent No. 1 requested this claim be dismissed without prejudice for lack of prosecution. The claimant objected to this request for dismissal, and requested a second hearing. She was unable to find an attorney who would represent her, so the claimant appeared at the second hearing pro se. In a second Opinion and Order filed December 23, 2020, the ALJ found the issues for which the claimant sought relief in the second hearing had already been litigated and decided in the first hearing; therefore, the claimant's re-litigation of these issues was barred pursuant to the doctrine of *res judicata*/issue preclusion, also known as collateral estoppel. As she had done after the first hearing, the claimant failed and/or refused to appeal this second opinion and order.

On January 28, 2021, Respondent No. 1 filed a second motion to dismiss (MTD) with the Commission 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 this motion to dismiss, as well as a copy of the notice of the subject hearing via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, to her last known address of record with the Commission. Thereafter, via a letter to the Commission dated August 15, 2021, the claimant once again objected to Respondent No. 1's January 28, 2021, motion to dismiss without prejudice for lack of prosecution.

By order dated May 7, 2021, the claimant requested, and the Commission granted, her one (1)-time-only change of physician (COP) request from Dr. Richard M. Hilborn to Dr. Christopher Young. A review of Dr. Young's medical records, which the claimant introduced into the record at the subject hearing, reveal the complaints the claimant has made to Dr. Young are essentially the same complaints she made to Dr. Hilborn and other of her treating physicians, all of which were, of course, the subject of the two (2) prior full hearings mentioned above. (Claimant's Exhibit 1 at 1-4).

Via an MTD filed with the Commission on July 29, 2021, Respondent No. 1 renewed their second motion to dismiss, which had been filed with the Commission on January 28, 2021. (Respondent No. 1's Exhibit 1 at 12-13). Again, the claimant objected to Respondent No. 1's MTD via a letter to the Commission dated August 15, 2021.

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, including but not limited to the complete hearing transcripts, exhibits, and any blue-backed post-hearing hearing briefs related to the two (2) full hearings held in this matter which resulted in the two (2) opinions and orders filed to date, referenced, *supra*: the first filed on December 19, 2020; and the second filed on December 23, 2020.

### **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 Respondent No. 1's motion to dismiss for lack of prosecution which they filed with the Commission on January 28, 2021, which they renewed by an MTD filed with the Commission on July 29, 2021.

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 well-documented, voluminous record conclusively reveals the claimant does not have a legitimate claim to prosecute at this time; and she has failed and/or refused to proactively and effectively prosecute the subject claim at this time. Indeed, more than that – and dispositively in this case – the record conclusively demonstrates the issues the claimant wishes to litigate at this time are the *same issues which were the subject of the two (2) prior full hearings*, and have already been litigated and decided, and now are *res judicata* and constitute the law of the case. Therefore, since the subject underlying issues have been litigated and decided, there exist no other issues to litigate relating to the claimant’s alleged injuries of August 17, 2016 – over five (5) years ago – either now or in the future. (Claimant’s Exhibit 1).

Finally, it must be noted that, as the claimant admitted at the Friday, October 24, 2021, hearing she was involved in yet another motor vehicle accident (MVA) on August 6, 2020. (It must be also noted the claimant had been involved in an MVA prior to the date of the August 17, 2016, work incident which was/is the basis of the August 2016 claim; and which involved similar, if not essentially the same, neck, and radicular complaints.). A medical record from the Collom and Carney Clinic in Texarkana, Texas, dated August 8, 2020, reveals the claimant’s August 6, 2020, MVA had caused her to develop “severe neck and back pain.” (RX1 at 1; 1-9). Again, there exists no objective medical evidence of any kind or character relating any of the claimant’s current symptoms to her minor August 16, 2017, work incident. And it was not until about nine (9) months after this August 2020 non-work-relate MVA the claimant requested, and the Commission granted, her COP to Dr. Young.

These latest facts, especially when considered in light of the findings of fact and conclusions of law of the two (2) prior hearings in this claim, serve only to bolster the two (2) prior opinions

and orders, and their findings of fact and conclusions of law. *If* the claimant has any legal remedy whatsoever arising out of the subject August 16, 2017, work incident, it most certainly does not arise out of the Arkansas Workers' Compensation Act (the Act). The claimant currently has health insurance which is paying for her medical treatment for the neck and shoulder complaints that have already been determined not to be related to her August 17, 2017, work incident, and which the August 2020 medical records demonstrate arise out of an MVA where the claimant was struck by another driver. The claimant was not asked, nor did she testify concerning, whether there is ongoing litigation pending or being contemplated against the driver of the vehicle she alleges struck her.

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. The issues the claimant wishes to litigate at this time already have been the subject of no less than two (2) prior full hearings. The issues were decided in favor of Respondent No. 1, and against the claimant, and the claimant did not appeal from either of these opinions. Therefore, the issues that were the subject of the Opinions and Orders filed December 19, 2018, and December 23, 2020, are now *res judicata*, and constitute the law of the case.
3. Since the underlying issues have already been litigated and decided via two (2) separate hearings and opinions and orders, from which the claimant did not appeal, and which now are final orders, there simply exist no issue(s) to be litigated and decided at this time arising out of the August 17, 2016, minor work incident. This claim is *over*.
4. Therefore, Respondent No. 1's motion to dismiss without prejudice filed with the Commission on January 28, 2021, and renewed via motion filed with the Commission on July 29, 2021, should be and hereby is GRANTED; and 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.

WHEREFORE, for all the aforementioned reasons, I am compelled to find this claim is denied and dismissed.

Respondent No. 1 shall pay the court reporter's invoice within twenty (20) days of their receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp

MP/mp