

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NOS. H005838**

**CHARLOTTE ROGALLA,
EMPLOYEE**

CLAIMANT

**CARELINK,
EMPLOYER**

RESPONDENT

**AGING SERVICES FUND/RISK MG'T
RESOURCES, INC.,
INS. CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MARCH 29, 2021**

Hearing conducted on Monday, March 29, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant is represented by Ms. Laura Beth York, Rainwater, Holt & Sexton, P.A., Little Rock, Pulaski County, Arkansas, who waived appearance at the hearing.

The respondents were represented by Ms. Melissa Wood, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Monday, March 29, 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 Commission Rule 099.13 (2020 Lexis Replacement).

The respondents filed a motion to dismiss with the Commission on February 19, 2021 requesting this claim be dismissed for lack of prosecution. A copy of the respondents' motion, as well as a copy of the hearing notice, were mailed to the claimant and her attorney of record at their correct addresses of record in advance of the hearing in accordance with applicable Arkansas law. By email to the ALJ, and the respondents' attorney, Ms. Melissa Wood, dated March 17, 2021, the claimant's attorney, Ms. York, advised the claimant intended to pursue this claim, but had been

having some difficulty obtaining diagnostic test results she believed are necessary in order to proceed with the claim's prosecution. Ms. York advised she did not intend to attend the Monday, March 29, 2021 hearing on the respondents' motion to dismiss without prejudice, and she did not object to the claim's dismissal without prejudice.

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

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 as a whole conclusively reveals the claimant has failed and/or refused to prosecute her claim to date, as she does not have sufficient medical evidence to do so at this time. If and when the claimant and/or her attorney obtain(s) such evidence she/they may, of course, refile this claim so long as she/they do so within the deadlines prescribed by Arkansas law.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other 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 claimant is deemed to have waived her appearance at the subject hearing. The claimant also is deemed to have no objection to the dismissal of her claim without prejudice at this time.
3. The claimant has to date failed and/or refused to prosecute her claim.

4. Therefore, the above-styled claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a)(4), and Commission Rule 099.13.

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

The respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp