

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H204360**

**CLAUDELL REED,  
EMPLOYEE**

**CLAIMANT**

**WENDYS OLD FASHION HAMBURGER,  
EMPLOYER**

**RESPONDENT**

**PHOENIX INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 4, 2024**

Hearing conducted on Tuesday, January 3, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant, Ms. Claudell Reed, pro se, of Jacksonville, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable Guy Alton Wade, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

Today, January 3, 2024, was the second hearing on a motion to dismiss in this matter. The first hearing was conducted on Wednesday, 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) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.). The Respondents filed a motion to dismiss with the Commission on March 17, 2023, requesting this claim be dismissed 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 and the hearing notice at her current address of record via the United States Postal Service (USPS), First Class and Certified Mail, Return Receipt Requested, which she received on June 17, 2023.

The Claimant appeared for the hearing and stated she had an attorney and believed her attorney was handling the matter. Claimant's attorney, Laura Beth York, withdrew her services, via email, on May 16, 2023. I found, during that hearing, there was a miscommunication between Claimant's attorney and herself about the representation. The Claimant desired to go forward with her claim. I advised the Claimant of her right to seek counsel and the benefits of the Commission legal advisors. I further advised the Claimant that she is held to the same standard as an attorney if she represents herself.

Approximately 6 months later, the Claimant has not availed herself of legal counsel or answered discovery requests propounded by the Respondents. The Claimant has not submitted questionnaire responses required by the Commission even when she was issued additional time to do so. Due to the lack of prosecution of this claim, Respondents requested a motion to dismiss hearing on October 25, 2023. Notice of this motion to dismiss was sent to the Claimant by First-Class and Certified Mail on October 30, 2023, but she did not respond to the motion nor show up to the January 3, 2024, hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, including Respondents' Exhibit 1, non-medical records, consisting of twenty-two pages, I hereby make the following findings:

1. The Commission has jurisdiction over this claim.
2. The Claimant has failed to prosecute her claim under Commission Rule 99.13.
3. The Respondents' Motion to Dismiss should be granted.
4. The Claimant and Respondents both had proper notice of January 3, 2024, hearing.

**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. I do find by the preponderance of the evidence, introduced at the hearing, and contained in the record, that Claimant has not requested a hearing, nor has she taken any action to pursue her claim as of the hearing date. The Claimant has not complied with any discovery requests propounded by the Respondents or submitted the required questionnaires to the Commission despite being given additional time to do so. Therefore, I find by the preponderance of the evidence that the Claimant has failed to prosecute her claim under Commission Rule 99.13.

**CONCLUSION**

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted *without prejudice*.

**IT IS SO ORDERED.**

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Steven Porch  
Administrative Law Judge