

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H000662

CAROLYN SADDLER, EMPLOYEE

CLAIMANT

KELLY SERVICES USA, LLC, EMPLOYER

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
ESIS, INC., INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED JANUARY 6, 2021

Hearing before Administrative Law Judge James D. Kennedy in Little Rock, Arkansas.

Claimant is *pro se* and failed to appear.

Respondents are represented by their attorney, Eric Newkirk.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on January 5, 2021, in Little Rock, Arkansas on Respondents' Motion to Dismiss for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. The claimant was originally represented by Whitney James, who was allowed to withdraw from the case by an Order from the Full Commission dated September 2, 2020. The claimant was *pro se* at the time of the hearing and failed to appear. The claimant alleged that she sustained an injury to both knees during the course and in the scope of her employment, and the claim was initially accepted as compensable, with all related medical and indemnity benefits provided. The respondents contend that there was an overpayment of temporary disability payments. At no time has the claimant made a formal request for any additional benefits beyond the original filing of the Form AR-C on February 18, 2020. No action to pursue the claim has been taken for over six (6) months and the claimant

has failed to respond to the discovery that was propounded by the respondents. This lack of action led to a filing of a Motion to Dismiss.

An appropriate notice setting this matter for a hearing for a Motion to Dismiss was provided to the claimant by both certified and regular mail. A hearing was set for January 5, 2021, in regard to the Motion to Dismiss. The claimant did not file a response and failed to appear on the hearing date in Little Rock, Arkansas. At the time of the hearing, Eric Newkirk appeared on behalf of the respondents and asked that the matter be dismissed for lack of prosecution.

After a review of the record as a whole, to include all evidence properly before the Commission, and having an opportunity to hear the statements of the attorney for the respondents, there is no alternative but to find that this matter should be dismissed for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act.

ORDER

Pursuant to the above statement of the case, there is no alternative but to dismiss this claim in its entirety, without prejudice, for failure to prosecute.

IT IS SO ORDERED.

JAMES D. KENNEDY
ADMINISTRATIVE LAW JUDGE