

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. H009898**

**MARIA SHELL, EMPLOYEE**

**CLAIMANT**

**FACTORY CONNECTION, LLC, EMPLOYER**

**RESPONDENT**

**TRAVELERS PROPERTY AND CASUALTY  
OF AMERICA, CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JANUARY 24, 2023**

**Hearing before Administrative Law Judge James D. Kennedy on January 18, 2023, in Mountain Home, Baxter County, Arkansas.**

**Claimant is represented by Mr. Frederick S. "Rick" Spencer, Attorney-at-Law, of Mountain Home, Arkansas.**

**Respondents are represented by their attorney, Mr. Brett Whitley, Attorney-at-Law, of Little Rock, Arkansas.**

**STATEMENT OF THE CASE**

A hearing was held in the above-styled matter on January 18, 2023, in Mountain Home, Arkansas, on respondent's Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated §11-9-702 and Rule 099.13 of the Arkansas Workers' Compensation Act. Prior to the hearing, and after a full hearing involving different parties, the Commission asked Attorney Spencer if he planned to appear at a Motion to Dismiss hearing when he had already notified the Commission that the claimant no longer wanted to pursue her claim. He was allowed to waive his appearance but requested he be contacted if the claimant did in fact show up at the scheduled time for the hearing. Minutes before the scheduled time of the hearing, the claimant appeared and Mr. Spencer was then contacted by cell phone. Claimant's attorney talked to the claimant by phone and then announced to the Commission that the claimant had confirmed that she no longer wished to pursue her claim and he was again allowed to waive his personal appearance. The claimant was also placed under oath and she confirmed that she did not wish to pursue her claim. The claimant

filed an Arkansas Form-C, which was dated May 4, 2021, contending she had injured her left foot while handing hangers down to an associate. The respondents filed an Arkansas Form AR-2 on or about December the 7<sup>th</sup> or 8<sup>th</sup>, 2020, where they claimed that there was no injury. After various actions by the parties, a second request for dismissal of the claim was made by letter, which was filed with the Commission on October 12, 2022.

An appropriate notice setting this matter for a hearing for a Motion to Dismiss on January 18, 2023, was provided to the claimant by both Certified and First-Class mail. The claimant responded and notified the Commission that she no longer wished to pursue her claim by an email dated November 14, 2022. She also appeared at the hearing as described above. At the time of the hearing, Brett Whitley 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 respondent, the attorney for the claimant, and statements under oath by the claimant, it is found 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.

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JAMES D. KENNEDY  
ADMINISTRATIVE LAW JUDGE