

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G706829**

**JAQUELINE SMITH,  
EMPLOYEE**

**CLAIMANT**

**COOPER TIRE & RUBBER CO.,  
EMPLOYER**

**RESPONDENT NO. 1**

**COOPER TIRE & RUBBER CO./  
CENTRAL ADJUSTMENT CO., INC.,  
INS CARRIER/TPA**

**RESPONDENT NO. 1**

**STATE OF ARKANSAS,  
DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT NO. 2**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED MARCH 25, 2022**

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on Thursday, March 25, 2022, in Texarkana, Miller County, Arkansas.

The claimant, Ms. Jacqueline Smith, of Texarkana, Bowie County, Texas, failed and/or refused to appear at the hearing.

Respondent No. 1 was represented by the Honorable Karen H. McKinney, Barber Law Firm, P.A., Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable Christy L. King, State of Arkansas, Commission Special Funds Division, Little Rock, Pulaski County, Arkansas, waived her appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was conducted on Thursday, March 24, 2022, 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 Replacement).

On February 7, 2022, Respondent No. 1 filed a motion to dismiss (MTD) with the Commission requesting this claim be dismissed without prejudice for lack of prosecution. (Respondent No. 1's Ex. 1 at 1-2; 3-17). 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. (Commission Exhibit No. 1), which the claimant received on February 23, 2022. The claimant failed and/or refused to file an objection to Respondent No. 1's MTD, and she failed and/or refused to appear at the subject hearing on the MTD, or to cause anyone to appear on her behalf.

The record herein consists of the MTD hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

### **DISCUSSION**

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2021 Lexis Repl.), 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 February 7, 2022.

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 record which includes, but is not limited to the Commission's entire file in this claim, conclusively reveals the claimant has failed and/or refused to request a hearing within the last six (6) months, and she has failed and/or refused to prosecute her claim.

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. After having received due and legal notice of Respondent No. 1's MTD filed with the Commission on February 7, 2022, as well as a copy of the hearing notice of the subject hearing, the claimant failed and/or refused to object to the MTD, to appear at the hearing, nor did she cause anyone to appear on her behalf. Therefore, the claimant is deemed to have waived her objection to Respondent No. 1's MTD, as well as to have waived her appearance at the hearing.
3. The preponderance of the evidence conclusively demonstrates the claimant has failed and/or refused to request a hearing within the last six (6) months, and she has failed and/or refused to prosecute her claim.
4. Respondent No. 1's motion to dismiss without prejudice filed with the Commission on February 7, 2022, should be and hereby is GRANTED. Therefore, 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.

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

*Jacqueline Smith, AWCC No. G706829*