

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: HOO6315

SHELLY R. SMITH,  
EMPLOYEE

CLAIMANT

CIRCLE K STORES, INC.,  
EMPLOYER

RESPONDENT

TRAVELERS INDEMNITY COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 9, 2021

Hearing held before Administration Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' motion to dismiss for want of prosecution, on June 29, 2021, in this claim for workers' compensation benefits pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004). Here, the sole issue for determination is whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under Ark. Code Ann. §11-9-702 (Repl. 2012), and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the hearing transcript of the June 29, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

No testimony was taken at the hearing.

## DISCUSSION

The Claimant's attorney filed a Form AR-C with the Commission on October 1, 2020 in the above styled claim. Per this document, the Claimant asserted her entitlement to both initial and additional workers' compensation benefits. Her alleged work-related incident occurred on August 3, 2020. Counsel for the Claimant briefly described the cause of injury and the part of body injured: "Claimant was taking trash out and hurt her back. Claimant sustained injuries to back and other whole body." The Claimant filed a second Form AR-C on October 1, 2020 for the same incident. Of note, the Commission's file demonstrates that the date of injury was August 31, 2021, and that the third party administrator (TPA) is ESIS, Incorporated.

Nevertheless, it appears that on or about September 15, 2020, the Respondents filed a Form AR-2 with the Commission controverting this claim. Specifically, the Respondents wrote: "No employer/employee relationship."

Since the filing of the Form AR-C, the Claimant has failed to request a hearing on the merits before the Commission.

Therefore, on May 24, 2021, the Respondents filed a "Motion to Dismiss of Respondents," with a Certificate of Service to the Claimant's attorney.

On May 25, 2021, the Commission sent a notice to the Claimant's attorney and the Claimant of the motion with a deadline of June 8, 2021 for filing a written objection.

Ultimately, on June 10, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for June 29, 2021, on the Respondents' motion.

Subsequently, a hearing was conducted before the Commission, on the Respondents' motion to dismiss as scheduled. During the hearing, counsel for the Respondents moved that the claim be dismissed due to a lack of prosecution. The Claimant's counsel withdrew her objection

to the claim being dismissed due to conflicting documents in the record relating to the date of injury and the proper insurance carrier/third party administrator.

My review of the record shows that more than six (6) months have passed after the filing of the Form AR-C for a claim of compensation. However, since that time the Claimant has failed to make a bona fide request for a hearing with respect to her claim for workers' compensation benefits. As a result, I am persuaded that the Claimant has had ample time to pursue her claim for benefits; but she has failed to do so. Moreover, the Claimant does not object to this claim being dismissed without prejudice. Hence, the evidence preponderates that Claimant has failed to timely prosecute her claim.

Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that the Respondents' motion to dismiss the within claim should be granted pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13. Accordingly, this claim is hereby dismissed without prejudice, to the refiling within the limitation period specified by law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant filed two Form AR-Cs with the Commission in October 2020, alleging that she sustained a work-related injury in the course and scope of her employment with the respondent-employer on October 3, 2020.
3. Since this time, there has been no request for a hearing.
4. On May 24, 2021, the Respondents filed with the Commission a motion to dismiss this claim.
5. The Claimant's attorney does not object to the within claim for workers' compensation benefits being dismissed.

6. The evidence preponderates that the dismissal for want of prosecution is warranted.
7. That the Respondents' motion to dismiss is hereby granted pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13, without prejudice, to the refiling of the claim within the specified limitation period.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, I find that pursuant to Ark. Code Ann. §11-9-702 and Rule 099.13, this claim is hereby dismissed without prejudice, to the refiling within the limitation period specified by law.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**