

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H202136**

TINA SMITH, EMPLOYEE	CLAIMANT
RIVERVIEW BEHAVIORAL HEALTH, LLC, EMPLOYER	RESPONDENT
SAFETY NATIONAL CASUALTY COMPANY, INSURANCE CARRIER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

**OPINION FILED JULY 25, 2023**

Hearing held before Administrative Law Judge Chandra L. Black, in Texarkana, Miller County, Arkansas.

Claimant, pro se, failed to appear at the hearing.

Respondents represented by the Honorable Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on July 14, 2023 in the present matter pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), to determine whether the above-referenced matter should be dismissed for failure to prosecute under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

Appropriate Notice of this hearing was attempted on all parties to their last known address, in the manner prescribed by law.

The record consists of the transcript of the July 14, 2023, hearing and the documents contained therein. Specifically, the Respondents' Hearing Exhibit consisting of seventeen pages

was marked as Respondents' Exhibit 1. Additionally, the entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

### **Discussion**

On March 14, 2022, the Claimant's attorney filed with the Commission a claim for Arkansas workers' compensation benefits by way of a Form AR-C. The Claimant alleged that she sustained an injury to her back on November 3, 2021, while performing employment duties for the respondent-employer. The Claimant's attorney requested both initial and additional workers' compensation benefits. In fact, he checked all the boxes for every conceivable benefit in connection with this claim.

The Claimant's attorney requested a hearing per correspondence filed with the Commission on April 26, 2022.

Therefore, on April 29, 2022, the Commission began the prehearing process by mailing Prehearing Questionnaires and Notices to the parties. On June 1, 2022, the Commission set this claim for a prehearing telephone conference, which was scheduled to be conducted on June 28, 2022. The Claimant's deposition was taken on June 16, 2022. However, on June 28, 2022, the parties jointly asked that the matter be removed from the docket because they needed additional time to complete discovery. As a result, on that same date, the Commission cancelled the prehearing telephone conference, and the claim was returned to the Commission's general files.

The Claimant's attorney filed with the Commission a Motion to Withdraw from representing the Claimant in this matter on August 11, 2022. The Full Commission entered an order granting the Claimant's attorney motion to withdraw from representing her in this matter on August 26, 2022.

Since this time, the Claimant has remained *pro se*. Moreover, there has been no bona fide action on the part of the Claimant to prosecute her claim for workers' compensation benefits, or otherwise pursue a resolution to this matter.

As a result, on March 22, 2023, the Respondents filed with the Commission a Respondents' Motion to Dismiss for a lack of prosecution. The Respondents notified the Claimant of their motion for dismissal by way of depositing a copy thereof in the United States Mail.

The Commission mailed a letter-notice to the Claimant to her last known address with the Commission on March 22, 2023. Said letter was sent by first-class mail and certified mail. Per this correspondence, the Claimant was given a deadline of twenty days, for filing a written response to the Respondents' motion.

Yet, there has been no response from the Claimant.

However, the United States Postal Service informed the Commission on March 27, 2023, that they delivered this item to the Claimant's residence and left it with an individual. The return receipt bears the Claimant's printed name and signature.

Therefore, pursuant to a Hearing Notice dated June 12, 2023, the Commission notified the parties that a hearing was scheduled to address the Respondents' motion to dismiss this claim due to a lack of prosecution. The notice was sent to the Claimant via certified and first-class mail. Said hearing was scheduled for July 14, 2023, at 2:00 p.m., at the Miller County Juvenile Justice Center in Texarkana, Arkansas.

The hearing notice sent to the Claimant via certified mailed was returned to the Commission marked "Return to sender. Unclaimed." However, the notice sent by first class mail has not been returned to the Commission.

Still, there has been no response from the Claimant.

Subsequently, a hearing was in fact conducted on the Respondents' motion for dismissal as scheduled. The Claimant failed to appear at the dismissal hearing. However, the Respondents appeared through their attorney.

Counsel noted that the Claimant has failed to timely prosecute her claim for workers' compensation benefits. Counsel further noted that there has been no attempt on the part of the Claimant to move forward with a hearing since the taking of her deposition on June 16, 2022. Counsel indicated, among other things, that at the time of her deposition, the Claimant essentially stated that she did not wish to pursue her claim. Therefore, counsel moved that this claim be dismissed under Ark. Code Ann. §11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, without prejudice due to all the afore reasons.

The record before me proves that the Claimant has failed to timely prosecute her claim for workers' compensation benefits. The Claimant has not requested a hearing since her attorney was allowed to withdraw from representing her almost a year ago. She failed to appear at the hearing to object to her claim being dismissed and she has not responded to the notices of this Commission. Under these circumstances, I am compelled to find that the evidence preponderates that the Claimant has abandoned her claim. Therefore, per Ark. Code Ann. §11-9-702 and Rule 099.13 of this Commission, I find that this claim should be and is hereby respectfully dismissed, without prejudice to the refiling of it with 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 Respondents filed with the Commission, a motion for dismissal of this claim, for which a hearing was held.
3. The Claimant has not requested a hearing since her attorney was allowed to withdraw from representing her in this matter, which was almost a year ago. Hence, the evidence preponderates that the Claimant failed to prosecute her claim for workers' compensation benefits.
4. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
5. The Respondents' motion to dismiss this claim for a lack of prosecution is hereby granted, *without prejudice*, pursuant to Arkansas Code Ann. §11-9-702, and Commission Rule 099.13, to the refiling of it within the limitation period specified by law.

**ORDER**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed pursuant to Arkansas Code Ann. 11-9-702, and Arkansas Workers' Compensation Commission Rule 099.13, *without prejudice*, to the refiling of it, within the limitation period specified by law.

**IT IS SO ORDERED.**

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