

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H003216**

TRACY D. SPARKS, EMPLOYEE	CLAIMANT
MOUNTAIN VALLEY SPRING COMPANY, LLC, EMPLOYER	RESPONDENT
SAFETY NATIONAL CASUALTY CORP., INSURANCE CARRIER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC. THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED SEPTEMBER 10, 2021

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

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

Respondents represented by Mr. Michael C. Stiles, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

A hearing was held on September 8, 2021, 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 (d) (Repl. 2012), and Arkansas Workers' Compensation Commission Rule 099.13.

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

The record consists of the transcript of the September 8, 2021, hearing and the documents contained therein. The remainder of the Commission's file has also been made a part of the record. It is hereby incorporated herein by reference.

## Discussion

On July 6, 2020, the Claimant's attorney filed with the Commission, a claim for Arkansas workers' compensation benefits on behalf of the Claimant by way of a Form AR-C. Specifically, the Claimant's attorney alleged: "Claimant was in the course and scope of employment when he tripped over a pallet. Claimant sustained injuries to his left knee, right elbow and other whole body." His attorney checked all the boxes for both initial and additional workers' compensation benefits.

The respondent-insurance-carrier filed a Form AR-2 with the Commission on June 10, 2020, wherein they accepted compensability of the claim for an injury to the Claimant's right arm. Therefore, the Respondents paid proper benefits to the Claimant.

On September 18, 2020, the Claimant passed away for reasons unrelated to his workers' compensation claim.

On or about January 14, 2021, the Claimant's attorney filed with the Commission a motion to be relieved as counsel of record. Counsel stated that the Claimant died on September 18, 2020. She further stated that she spoke with the Claimant's wife on November 6, 2020 and explained that they were closing the Claimant's file with their firm. On January 28, 2021 the Full Commission entered an order granting the motion for the Claimant's attorney to withdraw as counsel of record in this matter.

Since this time, there has been no action on the part of the Claimant's next of kin/estate to prosecute this claim, or otherwise pursue benefits.

As a result, the Respondents filed a Respondents' Motion Dismiss Without Prejudice and Brief in Support of Respondents' Motion to Dismiss Without Prejudice with the Commission on July 12, 2021. These pleadings also included a Certificate of Service to the Claimant.

The Commission sent a notice of the Respondents' motion to the Claimant last known on July 15, 2021. Per this correspondence, a deadline of August 5, 2021 was given for filing a written response.

There was no response from the Claimant's estate.

Therefore, pursuant to a Hearing Notice dated August 9, 2021, the Commission notified the parties that the matter had been set for a hearing on the motion for dismissal of this claim due to a lack of prosecution. Said hearing was scheduled for on September 8, 2021, at 10:00 a.m., at the Arkansas Workers' Compensation Commission, in Little Rock, Arkansas.

However, the United States Postal Service returned this notice to the Commission on August 24, 2021.

A hearing was in fact conducted on the Respondents' motion as scheduled. The Claimant's next of kin failed to appear at the hearing. However, the Respondents appeared through their attorney.

Counsel essentially noted that the Claimant has failed to timely prosecute his claim for workers' compensation benefits. Counsel noted that the Claimant has passed away due to reasons unrelated to this claim; and that there has been no attempt on the part of his estate to prosecute this claim or appear at the hearing to object to the dismissal of the claim. Therefore, counsel moved that this claim be dismissed without prejudice under Ark. Code Ann. §11-9-702 (d) and Commission Rule 099.13.

The record before me shows that a request for a hearing has not been filed by or on the behalf of the Claimant since the filing of the Form AR-C, which was done over a year ago (on July 6, 2020). The Claimant's next of kin/estate has failed to object to this claim being dismissed. Hence, the preponderance of the evidence shows that this claim has been abandoned. Therefore,

I find that the dismissal of this claim is warranted, without prejudice, to the refiling of it within the limitation period specified by law. Said dismissal is made pursuant to the provisions of Ark. Code Ann. §11-9-702 (d) and Arkansas Workers' Compensation Commission Rule 099.13.

**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 Arkansas Code Annotated. §11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 6, 2020, the Claimant's attorney filed a Form AR-C, with the Commission, alleging that the Claimant sustained injuries to his left knee, right elbow, and other whole body.
3. The respondent-insurance-carrier filed a Form AR-2, with the Commission on or about June 10, 2020 accepting the claim for a compensable injury to the Claimant's right arm. Since this time, the Claimant passed away due to reasons unrelated to this claim.
4. The Full Commission entered an order granting the Claimant's attorney motion to withdraw on January 28, 2021.
5. Since the filing of the Form AR-C, neither the Claimant and/or his estate has tried to prosecute this claim or otherwise advance it.
6. On July 12, 2021, the Respondents filed with the Commission, a Respondents' Motion to Dismiss to Dismiss Without Prejudice, and a Brief in Support of Respondents' Motion to Dismiss Without Prejudice.
7. The evidence preponderates that Claimant has failed to prosecute this Claimant under provisions of Ark. Code Ann. §11-9-702 (d) and Arkansas Workers' Compensation Commission Rule 099.13.
8. Appropriate Notice of the dismissal hearing was attempted on all parties to their last known address, in the manner prescribed by law.
9. The Respondents' motion to dismiss is granted; this claim is hereby dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702 (d), 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 Ark. Code Ann. §11-9-702(d) and Arkansas Workers' Compensation Commission Rule Commission Rule 099.13, without prejudice to the refiling of this claim within the limitation period specified by law.

**IT IS SO ORDERED.**

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