

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H301113**

**BELINDA TYE,
EMPLOYEE**

CLAIMANT

**FEDEX GROUND PK'G SYSTEM, INC.,
EMPLOYER**

RESPONDENT

**FEDEX GROUND PK'G SYSTEM, INC./
SEDGWICK CLAIMAS MG'T SERVICES, INC.
CARRIER/TPA**

RESPONDENT

**OPINION TO DISMISS WITHOUT PREJUDICE
FILED NOVEMBER 12, 2024**

Hearing conducted on Tuesday, November 12, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Belinda Tye, pro se, of Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Zachary Ryburn, Matthews, The Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, November 12, 2024, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2024 Lexis Replacement) and Commission Rule 099.13 (2024 Lexis Replacement).

The claimant herein previously was represented by counsel, the Honorable Laura Beth York of the Rainwater, Holt & Sexton law firm in Little Rock, Pulaski County, Arkansas. A prehearing teleconference was conducted on November 14, 2023, which resulted in a prehearing order filed November 21, 2023, scheduling a hearing date for Wednesday, February 21, 2024. The claimant

had failed and/or refused to timely respond to the respondents' discovery requests, which resulted in the respondents filing a motion to compel discovery on June 11, 2024.

On July 26, 2024, citing an inability to contact and communicate with the claimant, the claimant's attorney/Ms. York filed with the Commission a motion to withdraw as the claimant's counsel. By unanimous order filed August 14, 2024, the Full Commission granted Ms. York's request to withdraw as the claimant's counsel. Soon thereafter, by motion filed with the Commission on September 13, 2024 (MTD), the respondents requested this claim be dismissed for lack of prosecution pursuant to the aforementioned statute and Commission rule.

In compliance with the applicable law the claimant was provided due and legal notice of the respondents' MTD as well as the date, time, and location of the subject hearing. The claimant did not respond in writing to the respondents' motion in any way, and she failed and/or refused to appear at the subject hearing.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto.

DISCUSSION

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2024 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 the respondents' motion to dismiss. 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 record conclusively reveals the claimant has failed and/or refused to prosecute her claim at this time.

Therefore, after a thorough consideration of the facts, issues, the applicable law, representations of counsel, 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 been mailed due and legal notice of the respondents' MTD without prejudice filed September 13, 2024, as well as notice of the date, time, and place of the subject hearing, the claimant failed and/or refused to respond in any way to the respondents' MTD, and she failed and/or refused to appear at the hearing. Therefore, the claimant is deemed to have waived her right to a hearing on the respondents' MTD.
3. The respondents' MTD without prejudice filed September 13, 2024, should be and hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* Section 11-9-702(a) and (b), and Commission Rule 099.13.

This Order shall *not* be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone acting legally and on her behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

If they have not already done so, the respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp

