

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H001481**

**FRANCES VIVONA,
EMPLOYEE**

CLAIMANT

**FIRST STEP, INC.
EMPLOYER**

RESPONDENT

**ATA WORKERS' COMPENSATION SELF-INSURED
TRUST/RISK MG'T RESOURCES, INC.
CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED FEBRUARY 9, 2021**

Hearing conducted on Tuesday, February 9, 2020, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Frances Vivona, *pro se*, of Caddo Gap, Montgomery County, Arkansas, failed and/or refused to appear at the hearing.

The respondents were represented by the Honorable Melissa Wood, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Tuesday, February 9, 2021, 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 Commission Rule 099.13 (2020 Lexis Replacement). On December 28, 2020, the respondents filed a motion to dismiss with the Commission requesting this claim be dismissed without prejudice for lack of prosecution.

In accordance with the applicable Arkansas law, the claimant was mailed and received due and legal notice of the respondents' motion to dismiss, as well as a copy of the hearing notice, via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, on

January 30, 2021, as is evidenced by the signature on the return receipt, a copy of which was introduced into evidence at the hearing as Commission Exhibit 1. (Commission Exhibit 1).

Thereafter, the claimant failed and/or refused to file any response to the respondents' motion to dismiss, either via email, USPS, or any other medium of communication. She also failed and/or refused to appear at the hearing, or to cause anyone to appear on her behalf.

The record herein consists of the 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), 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 his 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 the respondents' December 28, 2020, motion to dismiss without prejudice, as well as notice of the hearing via USPS First Class Certified Mail, Return Receipt Requested, the claimant failed and/or refused to either file a response to the respondents' motion to dismiss, or to appear at the hearing. Consequently, the claimant is deemed to have waived her appearance at and right to the hearing.

3. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute her claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed December 28, 2020, is GRANTED; and this claim hereby 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.

This opinion and 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).

The respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp