

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G902756

LETHA WALKER-RICHARDSON,  
EMPLOYEE

CLAIMANT

LITTLE ROCK SCHOOL DISTRICT,  
EMPLOYER

RESPONDENT NO. 1

ARKANSAS SCHOOL BOARDS ASSOCIATION,  
INSURNACE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND

RESPONDENT NO. 2

OPINION FILED DECEMBER 3, 2021

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

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

Respondents No. 1 represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas.  
Mr. Pake waived his appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held on the Respondents' No. 1 motion to dismiss for want of prosecution, on November 10, 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 November 10, 2021. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by

reference. Respondents No. 1 offered into evidence one exhibit, a Respondents' Hearing Exhibit Index, consisting of nine (9) numbered pages. Said exhibit has been marked as Respondents' Exhibit 1.

No testimony was taken at the hearing.

#### BACKGROUND

The Claimant's previous attorney filed a Form AR-C with the Commission on May 13, 2019 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 February 7, 2019. Counsel for the Claimant briefly described the cause of injury and the part of body injured as follows: "Claimant attempted to break up fight between students and sustained injuries to her left hand, left shoulder, left hip/leg, and other whole body."

On or about December 8, 2019, Respondents No. 1 filed a Form AR-2 with the Commission accepting this as a compensable claim for injuries to the Claimant's left shoulder and left hip.

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

Therefore, on December 9, 2019 Respondents No. 1 filed a Motion to Dismiss for Failure to Prosecute, with a Certificate of Service to the Claimant's attorney and counsel for the Trust Fund. On December 20, 2019, the Commission sent a notice to the Claimant's notifying her of the motion with a deadline for filing a written objection. Per an e-mail dated January 9, 2020, the Claimant's attorney, among other things, objected to the motion for dismissal of this claim.

On February 21, 2020, the matter was scheduled for Prehearing Telephone Conference for April 8, 2020. Due to the crisis presented by the COVID-19 pandemic, said conference was canceled.

The Prehearing Telephone Conference was reset for July 15, 2020. Because there were some outstanding issues relating to benefits being paid, and various other outstanding issues, the claim was rescheduled for another Prehearing Telephone Conference on July 22, 2020. However, on July 21, 2020, the parties requested that the Prehearing Telephone Conference be canceled. They also requested that the file be returned to the Commission's general files, which was done.

Subsequently, Claimant's attorney filed a motion to withdraw from representing the Claimant in this workers' compensation claim. On June 17 2021, the Full Commission entered an order granting the motion.

Meanwhile, the Claimant continued to fail to prosecute or otherwise pursue her claim.

Therefore, on July 22, 2021, Respondents No. 1 filed another "Motion to Dismiss for Failure to Prosecute," with a Certificate of Service to the Claimant. However, the file was not transferred for adjudication until September 10, 2021.

Nevertheless, on September 14, 2021, the Commission sent a notice to the Claimant notifying her of the motion with a deadline for filing a written objection. Information received by the Commission from the United States Postal Service shows that this item was delivered to the Claimant's last known address on September 15, 2021.

However, there still was no response from the Claimant regarding the motion for dismissal.

Subsequently, on October 5, 2021, the Commission sent a Notice of Hearing to the parties letting them know that a hearing was scheduled for Wednesday, at 10:00 a.m., on November 10, 2021, on Respondents No. 1's' motion to dismiss.

Information received by the Commission from the United States Postal Service shows that they delivered the hearing notice to the Claimant's last known address on October 6, 2021. Still, there was no response from the Claimant regarding said hearing notice.

A hearing was in fact held on Respondents No. 1's motion to dismiss as scheduled. During the hearing, counsel for Respondents No. 1 moved that the claim be dismissed due to a lack of prosecution under the provisions of Ark. Code Ann. §11-9-702 and Rule 099.13.

Following the hearing, I sent an e-mail to Respondents No.1's attorney, inquiring about status of the payment of any benefits on this claim. Respondents No. 1's provided information indicating that benefits are not currently being paid to or on behalf of the Claimant.

#### DISCUSSION

The applicable law and Commission Rule are outlined below.

Specifically, Ark. Code Ann. §11-9-702(d) reads:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

Commission Rule 099.13 reads:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

My review of the record shows that more than six (6) months have passed subsequent to the filing of the Form AR-C for a claim of workers' compensation benefits. 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. Hence, no action whatsoever has been taken by the Claimant to resolve or pursue her claim. Moreover, despite being given proper notice of the dismissal hearing in the manner prescribed under the law, the Claimant did not appear at the hearing to object to the dismissal.

Under these circumstances, I am persuaded that the Claimant has had ample time to pursue her claim for benefits; but she has failed to do so. Hence, the evidence strongly suggest that the Claimant has abandoned her claim for workers' compensation benefits. Therefore, based on my review of the documentary evidence, and all other matters properly before the Commission, I find that Respondents No. 1's' 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 respectfully dismissed without prejudice, to the refileing of it 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 a Form AR-C for workers' compensation benefits with the Commission on May 13, 2019, alleging that she sustained work-related injuries in the course and scope of her employment with the respondent-employer on February 7, 2019.
3. Since this time, the Claimant has failed to make a bona fide request for a hearing on the merits, or otherwise tried to resolve her claim for workers' compensation benefits.

4. Respondents No. 1 filed with the Commission a second Motion to Dismiss for Failure to Prosecute in this matter.
5. After notice of hearing was given to the parties in the manner as prescribed by law, a hearing was held on Respondents' No. 1 motion for dismissal. However, the Claimant failed to appear at the hearing to object to her claim being dismissed and she has not responded to the written Notices of this Commission.
6. More than six (6) months have passed since the filing of this claim and no bona fide request for a hearing has been made by the Claimant.
7. The evidence preponderates that the dismissal for want of prosecution is warranted.
8. That Respondents No. 1's motion to dismiss is hereby granted pursuant to the provisions of 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 respectfully 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**