

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE № H403580**

SHAMARA WHEELER, EMPLOYEE

CLAIMANT

AMAZON.COM, INC., EMPLOYER

RESPONDENT

**AMERICAN ZURICH INSURANCE CO./
SEDGWICK CLAIMS MANAGEMENT, CARRIER/TPA**

RESPONDENT

OPINION FILED 24 MARCH 2025

Heard before Arkansas Workers' Compensation Commission ("the Commission")
Administrative Law Judge JayO. Howe on 19 March 2025 in Little Rock, Arkansas.

The *pro se* claimant did not appear.

Newkirk & Jones, Mr. Rick Behring, appeared for the respondents.

STATEMENT OF THE CASE

A hearing on the respondents' Motion to Dismiss was held on this matter in Little Rock, Arkansas, on 19 March 2025. This case relates to an accepted claim of a specific injury occurring on 10 October 2023. Two exhibits were entered into the record at the hearing. Commission's Exhibit № 1 is a one-page proof of delivery form for a Certified Letter sent by the Commission to the claimant. Respondents' Exhibit № 1 consists of 16 pages of forms, pleadings, and correspondence relating to the claim.

On 4 June 2024 the claimant filed a Form AR-C through counsel that described a right knee injury. A First Report of Injury and a Form AR-2 were filed by the respondents on 10 June 2024. Those forms indicated that a right knee injury had been accepted and that the respondents were paying benefits.

On 24 October 2024, the claimant's attorney sought leave to withdraw from the case. On 6 November 2024, the Full Commission entered an order granting that request.

The respondents filed the immediate motion on 17 December 2024. Their motion cites Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012) and Commission Rule 099.13 (“Rule 13”) as grounds for a dismissal. They argued (1) that all appropriate benefits had been paid, (2) that the AR-C filed with the Commission only sought additional benefits, and (3) that the claimant had not made a bona fide hearing request. They further state that a two percent (2%) permanent impairment rating was accepted and paid to the claimant shortly after Dr. Joel Smith released her at maximum medical improvement on 16 August 2024.

Notice of the respondents’ motion was sent to the claimant, consistent with Commission practices, via First Class Mail and Certified Mail, on 19 December 2024 to the address provided on the AR-C. After no response or objection was received by my office, a notice of a hearing on that motion was sent in the same fashion on 27 January 2025. The hearing was set for 19 February 2025; but proceedings for that day were cancelled due to inclement weather. Notice of the hearing’s rescheduling was sent on 21 February 2025. When mailings are returned to the AWCC as not accepted or undeliverable, those mailings are appended to the claim’s file. This file contains no returned mailings. A Proof of Delivery form dated 27 February 2025 was provided to the Commission by the United States Postal Service. That form was admitted to the record as Commission’s Exhibit No 1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 Commission has jurisdiction over this matter.
2. The parties were provided with reasonable notice of the Motion to Dismiss and the hearing on that motion.
3. The evidence preponderates that the claimant has failed to prosecute a claim under Rule 13.

4. The Motion to Dismiss is hereby granted; this claim for additional benefits is dismissed without prejudice under Rule 13.

DISCUSSION

The respondents appeared on 19 March 2025, presented their motion, and offered supporting evidence into the record. As argued by the respondents at the hearing, the record reflects no bona fide request for a hearing on an issue ripe for litigation in this claim. The claimant did not respond to the motion or appear at the hearing to argue against the dismissal of his claim. The respondents offered a number of the documents noted above into the record which, collectively, were admitted as Respondents' Exhibit № 1.

Our Rule 13 provides for a dismissal for failure to prosecute an action upon application by either party and reasonable notice. Here, the claimant's injury was accepted as compensable and medical and indemnity benefits, including a two percent (2%) impairment rating, were paid. The claimant has not made a bona fide hearing request on any additional benefits or taken any other action towards prosecuting her claim.

The evidence demonstrates that both parties were provided reasonable notice of the hearing and that no action has been taken on the claim for additional benefits since the filing of the AR-C on 4 June 2024. Accordingly, a dismissal under Rule 13 is appropriate. Because of this finding, the arguments made under § 11-9-702 will not be addressed.

ORDER

The Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE