

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H103187**

**ANDREA WOODS,
EMPLOYEE**

CLAIMANT

**PULASKI COUNTY SPECIAL SCHOOL DIST.,
EMPLOYER**

RESPONDENT

**ARK. SCHOOL BOARDS ASS'N WORKERS'
COMPENSATION TRUST/ARK. SCHOOL BDS. ASS'N
INSURANCE CARRIER/TPA**

RESPONDENT

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED MARCH 21, 2023**

Hearing conducted on Wednesday, January 12, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable Willard Proctor, Jr., Proctor Law Firm, Little Rock, Pulaski County, Arkansas.

The respondents were represented by the Honorable Carol Lockhard Worley, Worley, Wood & Parrish, Little Rock, Pulaski County, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on Wednesday, January 11, 2023, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.). The respondents filed a motion to dismiss with the Commission on November 18, 2022, requesting this claim be dismissed without prejudice for lack of prosecution. (Respondents' Exhibit 1).

In accordance with applicable Arkansas law, the claimant was mailed due and proper legal notice of both the respondents' motion to dismiss as well as a copy of the hearing notice at his current addresses of record via the United States Postal Service (USPS), First Class Certified Mail,

Return Receipt Requested, which she received as is evidenced by Commission Exhibit 1. The claimant and her attorney appeared in person at the hearing and objected to the respondents' motion to dismiss. The claimant's attorney advised he intended to communicate and work with the respondents' attorney in order attempt to resolve some outstanding health insurance liens in order that the parties may enter into settlement negotiations. The claimant's attorney advised he intended to request a hearing if the parties' were unable to resolve the outstanding issues.

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 by reference.

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 demonstrates the claimant has neither requested a hearing nor taken any action as of the hearing date to prosecute her claim.

In an Amended Opinion and Order filed January 19, 2023 (the Amended Opinion and Order), at the request of the claimant and her attorney the ALJ held a decision on the respondents' motion to dismiss for lack of prosecution in abeyance for a period of 60 days – or until Monday, March 13, 2023, since 60 days from the hearing date fell on a Sunday. The ALJ explained in the subject order that the additional 60-day period was allowed in order to provide the parties any and all additional information they required in order to, “attempt to resolve any and all outstanding liens, and/or other issues, if any remain.” (Amended Opinion and Order filed January 19, 2023, “Findings of Fact and Conclusions of Law”, Paragraphs 1,2, and 3).

The Amended Opinion and Order went on to state that if the claimant and/or her attorney did not request a hearing within five (5) days of the expiration of the 60-day time period and advise both the Commission and the respondents in writing what specific issue(s) she/they believed were ripe for a hearing, the ALJ would grant the respondents' motion to dismiss for lack of prosecution without prejudice filed November 18, 2022, without the necessity of the respondents filing another motion, and without the Commission holding another hearing on the underlying motion. (*Id.* at Paragraph 4).

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, and as I advised the parties on the record at the hearing, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. Neither the claimant nor her attorney of record have, within five (5) days after the expiration of the aforementioned mutually agreed 60-day time-period, requested a hearing, in writing, advising both the Commission and the respondents what specific issue(s) she/they believe are ripe for a hearing in compliance with the Amended Opinion and Order filed January 19, 2023.
3. The preponderance of the evidence reveals the claimant has to date not requested a hearing within the last six (6) months, nor has she taken steps to actively prosecute her claim.
4. Therefore, the respondents' motion to dismiss without prejudice filed November 18, 2022, hereby is GRANTED; and this claim hereby 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, his attorney, any attorney he may retain in the future, or anyone acting legally and on his 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 shall pay the court reporter's invoice within twenty (20) days of the filing of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp