

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H104545**

<b>GABRIEL A. BEASTON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BAPTIST HEALTH, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>CLAIMS ADMIN. SVCS., THIRD-PARTY ADMINISTRATOR</b>	<b>RESPONDENT</b>

**OPINION FILED APRIL 15, 2022**

Hearing before Administrative Law Judge O. Milton Fine II on April 14, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Daniel Wren, Attorney at Law, Little Rock, Arkansas (neither appearing).

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing on the motion was conducted on April 14, 2022, in Little Rock, Arkansas. No testimony was taken in the case. Claimant failed to appear at the hearing; and his counsel waived his appearance. Without objection, the Commission's file on the claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1, forms, pleadings and correspondence related to the claim, consisting of one (1) index page and eleven (11) numbered pages thereafter.

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The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on May 27, 2021, Claimant purportedly injured his “shoulder(s)” at work on February 28, 2021, while restraining someone. According to the Form AR-2 that was filed that same day, Respondents accepted a right shoulder injury as compensable and paid benefits pursuant thereto.

On May 26, 2021, Claimant through counsel filed a Form AR-C, requesting additional medical and temporary total disability benefits in connection with his right shoulder injury. No hearing request accompanied this filing. Respondents’ counsel entered their appearance on October 5, 2021.

The record reflects that nothing further took place on this claim until January 27, 2022, when Respondents filed the instant Motion to Dismiss under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13. Therein, they alleged that more than six (6) months had passed without Claimant making a bona fide hearing request. The file was assigned to me on January 31, 2022; and that same day, my office wrote Claimant (at the time this took place, the file failed to note that Claimant’s counsel had made an entry of appearance; this was rectified later), asking for a response to the motion within twenty (20) days. The letter was sent to Claimant by first-class and certified mail at the address listed on his Form AR-C. The certified letter was returned to the Commission, undelivered,

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on February 28, 2022; but the one that was sent via certified mail was not returned.

On February 9, 2022, Claimant's counsel responded by objecting to the motion and stating that his client was "currently treating on his own" and that he believed that he would "hav[e] sufficient medical records to request a hearing within 60 days." Notwithstanding the above language, I notified the parties on February 10, 2022, that I was holding the Motion to Dismiss in abeyance, and issued prehearing questionnaires to the parties. Respondents filed a timely response thereto on February 11, 2022. However, Claimant failed to file a response, and did not respond to an email inquiry about it on March 7, 2022. For that reason, on March 11, 2022, I returned the file to the Commission's general files.

On March 15, 2022, Respondents renewed their Motion to Dismiss. On March 16, 2022, I scheduled a hearing thereon for April 14, 2022. The notice was sent to Claimant via certified and first-class mail to the same address as before. While the United States Postal Service has no record concerning whether Claimant claimed the certified letter, the first-class letter was not returned. Regardless, his counsel emailed my office on April 12, 2022, stating: "The Claimant, Gabriel Beaston, has no objection to the dismissal of the AR-C without prejudice. As such, I will not be attending the hearing on his behalf." The evidence thus preponderates that Claimant had notice of the hearing.

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The hearing on the Motion to Dismiss proceeded as scheduled on April 14, 2022. Again, neither Claimant nor his counsel appeared at the hearing; but counsel has represented that Claimant does not object to a dismissal of his claim without prejudice. Respondents appeared through counsel and argued for dismissal under the aforementioned authorities.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. The evidence preponderates that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; the claim is hereby dismissed *without prejudice* under AWCC R. 099.13.

## **III. DISCUSSION**

AWCC R. 099.13 reads:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim

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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.

*See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of these matters—by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

As shown by the evidence recounted above, (1) the parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon; and (2) Claimant has failed to pursue the claim because he has taken no further action in pursuit of it since the filing of the Form AR-C on May 26, 2021. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the applicability of Ark. Code Ann. § 11-9-702 (Repl. 2012).

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp.

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LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents (through counsel) at the hearing asked for a dismissal without prejudice; and Claimant (through counsel) indicated that his client did not object to this. Based on the above authorities, I agree and find that the dismissal of the claim should be and hereby is entered without prejudice.

#### **IV. CONCLUSION**

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed *without prejudice*.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge