

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H203365**

SHANIQUA BRISCOE, EMPLOYEE	CLAIMANT
EMPLOYEE SOLUTIONS, LLC, EMPLOYER	RESPONDENT
ZURICH AMERICAN INS. CO., CARRIER	RESPONDENT

OPINION FILED JUNE 8, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 19, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Rick Behring, Jr., 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 May 19, 2023, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Without objection, the Commission's file on the claim has been incorporated herein in its entirety by reference. In addition, Respondents' Exhibit 1, forms, pleadings and correspondence related to the claim, consisting of 29 numbered pages, was admitted into evidence.

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The record reflects the following procedural history:

The First Report of Injury or Illness filed on May 4, 2033, reflects that Claimant purportedly injured her hands at work on December 7, 2021. Per the Form AR-2 filed on May 5, 2022, Respondents controverted the claim in its entirety. Claimant filed a Form AR-C on May 11, 2022. Therein, she changed the alleged date of injury to February 18, 2022, and asserted that on that date, her “hand got infected from the soap at the work site” On May 23, 2022, Respondents wrote the Commission, reiterating that they had denied the claim. Respondents’ counsel entered an appearance on August 23, 2022. Claimant requested a hearing on August 30, 2022. Her letter to the Commission reads:

I Shaniqua Briscoe
Would like to appeal my worker comp denial.

/s/ Shaniqua Briscoe

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The matter was assigned to the Legal Advisor Division on August 31, 2022. But due to the lack of success in setting up a legal advisor conference and/or a mediation conference, the file was assigned to me on October 14, 2022. Prehearing questionnaires were issued to the parties on October 18, 2022. Respondents’ counsel notified my office on October 24, 2022, that both sides were willing to mediate the matter. For that reason, the file was returned to the Clerk of the Commission for reassignment to the Legal Advisor Division so that the mediation could be conducted. The mediation conference was scheduled for

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January 12, 2023. However, at the appointed date and time, Claimant failed to appear. The evidence also shows that she failed to respond to discovery that had been propounded to her.

The record reflects that no further activity occurred on the claim until February 3, 2023, when Respondents filed the instant motion, moving for dismissal of it under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012). On February 15, 2023, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first-class and certified mail to the address listed for her in the file and matching that on her Form AR-C. It was also sent to an email address that Claimant had furnished to the Commission. The United States Postal Service was unable to verify whether Claimant claimed the certified letter; but the first-class letter was not returned to the Commission. Regardless, no response from her was forthcoming. On March 24, 2023, I scheduled a hearing on Respondents' motion for May 19, 2023, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. Notice of this was sent to Claimant (as well as Respondents) by certified and first-class mail at the same address as before. In this instance, the certified letter was returned to the Commission. But the first-class letter to her was never returned. Thus, the evidence preponderates that she received the notice.

The hearing on the Motion to Dismiss proceeded as scheduled on May 19, 2023. Again, Claimant failed to appear at the hearing. But Respondents

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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. Claimant has failed to prosecute her claim.
4. Dismissal of this claim is thus warranted under AWCC R. 099.13.
5. The application of Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) is moot and will not be addressed.
6. The claim is hereby dismissed *without prejudice*.

III. DISCUSSION

Arkansas Code Annotated § 11-9-702(a)(4) (Repl. 2012) provides as follows:

If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

In turn, 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 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 this claim—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 her claim because she has taken no further action in pursuit of it (including appearing at the May 19, 2023, hearing to argue against its dismissal) since she made her hearing request on August 30, 2022. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the application of Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) is moot and will not be addressed.

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. 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)). At the hearing, Respondents asked for a dismissal without prejudice. Based on the above authorities, I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

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.

O. MILTON FINE II
Chief Administrative Law Judge

¹“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5th ed. 1983).