

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H201714**

REBECCA BROWN, EMPLOYEE	CLAIMANT
NESTLE USA, INC., Employer	RESPONDENT
INDEMNITY INSURANCE COMPANY, OF NORTH AMERICA (PA), Insurance Carrier	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., Third Party Administrator	RESPONDENT

OPINION FILED MARCH 31, 2023

Hearing before Administrative Law Judge Steven Porch on March 24, 2023, in Jonesboro, Craighead County, Arkansas

Claimant represented herself, *Pro Se*.

Respondent No. 1 is represented by Mr. Michael C. Stiles, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. No testimony was taken. The evidentiary record consists of Respondents Exhibit 1 and Respondent's oral argument. Without objection, the Commission's file on this claim has been incorporated herein by reference in its entirety.

The record reflects the following procedural history: The Claimant alleges that she has sustained a compensable injury to her hip and left leg resulting from a specific incident on December 10, 2021. Claimant further alleges that her injury

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occurred during the course and scope of her employment with Nestle USA, Inc. The Claimant did not file a Form AR-C with the Commission in this matter. However, Respondent filed a Form AR-2 on February 28, 2022, controverting Claimant's entire claim. Claimant requested a hearing on March 28, 2022. Claimant next filed a Preliminary Notice with the Commission indicating her willingness to mediate this claim on May 3, 2022. The Respondents informed the Clerk of the Arkansas Workers' Compensation Commission they were willing to mediate this claim, and the claim was assigned to the Commission's Legal Advisor Division.

The Claimant expressed in early June 2022 her desire to retain counsel before the mediation. Since then, there has been no action on this case for approximately nine months. There has not been an entry of appearance of an attorney on the behalf of the Claimant. The Claimant has not reached out to the Legal Advisor Division to request a mediation date or the Administrative Law Judge for a new hearing date.

II. 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 Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2. The parties were provided reasonable notice of the motion to dismiss and of the hearing thereon under AWCC R. 099.13.
3. The Commission is authorized to dismiss claims for want of prosecution pursuant to AWCC R. 099.13.
4. This claim should be, and hereby is, dismissed *without prejudice* pursuant to AWCC R. 099.13 due to want of prosecution.
5. Because of the above finding, Ark. Code Ann. § 11-9-702(d) (Repl. 2012) will not be addressed.

III. DISCUSSION

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

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.

In addition, AWCC R. 099.13 provides in relevant part:

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).

The Arkansas Court of Appeals in *Johnson* held that a claim could be dismissed for lack of prosecution since there is no justiciable issue. The authority

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for doing so comes under Rule 13, which the Commission promulgated under Ark. Code Ann. § 11-9-205(a)(1)(A) (Repl. 2012). This provision authorizes it “[t]o make such rules and regulations as may be found necessary[.]” See *Dura Craft Boats, Inc. v. Daugherty*, 247 Ark. 125, 444 S.W.2d 562 (1969); *Johnson, supra. Contra Dillard v. Benton Cty. Sheriff’s Off.*, 87 Ark. App. 379, 192 S.W.3d 287 (2004)(“Rule 13 . . . allows a dismissal . . . pursuant to Ark. Code Ann. § 11-9-702(b)(4), the portion of the statute relating to additional benefits”). Certainly, such a claim could be re-filed if a justiciable issue arises, provided that all other prerequisites for a cognizable claim are met.

At the hearing, The Claimant did not appear at the March 24, 2023, hearing after being duly served by U.S. certified mail, return receipt request. The return receipt was returned to the Commission with Claimant’s signature. The Respondent’s Attorney was present at the hearing. Under *Johnson, supra*, this claim should thus be dismissed under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702(d).

That, however, leaves the question of whether the dismissal 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). This includes claims dismissed under Rule 13. *Johnson, supra*. In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice.” (citing

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Professional Adjustment Bureau v. Strong, 75 Ark. 249, 629 S.W.2d 284 (1982);
Hutchinson v. North Arkansas Foundry, Claim No. D902143 (Full Commission
Opinion filed October 23, 1991)). In light of this preference, this claim should be
dismissed *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.

STEVEN PORCH
Administrative Law Judge