

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H302077**

CHRISTOPHER L. BRUMLEY, EMPLOYEE	CLAIMANT
ARK. STEEL ASSOCS. LLC, EMPLOYER	RESPONDENT
TRAVELERS CASUALTY & SURETY CO., CARRIER	RESPONDENT

OPINION FILED APRIL 9, 2024

Hearing before Administrative Law Judge O. Milton Fine II on April 5, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on April 5, 2024, 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. Admitted into evidence were Commission Exhibit 1 and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, each consisting of 16 pages.

The record reflects the following procedural history:

Per the First Report of Injury or Illness dated March 31, 2023, Claimant purportedly suffered an injury to his neck at work on December 17, 2021, when a

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low-hanging pipe caught his hard hat and jerked his head backwards. According to the Form AR-2 that was filed on March 31, 2023, Respondents denied the claim in its entirety.

Claimant filed a Form AR-C on or about March 27, 2023, concerning this alleged injury. Then, on August 29, 2023, through then-counsel Laura Beth York, Claimant filed another Form AR-C. Therein, he alleged that he was entitled to the full range of initial and additional benefits as a result of alleged injuries to his neck, right shoulder, and “other whole body.” No hearing request accompanied this filing. Respondents’ counsel entered his appearance by way of letter on April 24, 2023; and on August 30, 2023, he informed the Commission that his clients were still disputing that Claimant had suffered a compensable injury.

On November 6, 2023, York moved to withdraw from the case. In an Order entered on December 1, 2023, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until December 29, 2023. On that date, Respondents filed the instant motion, asking for dismissal of the claim—ostensibly under AWCC R. 099.13, since it asserted “lack of prosecution” as the basis for dismissal. My office wrote Claimant on January 2, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Newport address of Claimant listed in the file and his Forms AR-C. Someone with an illegible signature claimed the

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certified letter, and the first-class letter was not returned. However, no response from Claimant to the motion was forthcoming. For that reason, on January 24, 2024, a hearing on the Motion to Dismiss was scheduled for March 1, 2024, at 10:30 p.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant via first-class and certified mail to the same address as before. The evidence preponderates that the notice reached Claimant. On February 1, 2024, his fiancée contacted my office and stated that he was (as of that date) in the Arkansas Department of Correction with a parole date of March 1, 2024. For that reason, I issued an amended Notice of Hearing on that date, rescheduling the hearing on the motion for April 5, 2024, at 10:30 a.m. Yet again, the notice was sent to Claimant at the same address by certified and first-class mail. But in this instance, while the first-class letter was not returned, the certified letter came back to the Commission, unclaimed.

The hearing on the Motion to Dismiss proceeded as scheduled on April 5, 2024. Again, Claimant failed to appear at the hearing. But 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

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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 matter.
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 his claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this claim for initial benefits 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 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 the claim—by a preponderance of the evidence. This standard means the evidence

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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 his claim because he has taken no further action in pursuit of it (including appearing at the April 5, 2024, hearing to argue against its dismissal) since the filing of his amended Form AR-C on August 29, 2023. Thus, the evidence preponderates that dismissal is warranted under Rule 13.

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). The Commission and the appellate courts have expressed a preference for dismissals *without prejudice*. See *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

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).

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IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge