

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H109960**

SUSAN D. HOUSE, EMPLOYEE	CLAIMANT
AR. HEART HOSPITAL, LLC, Employer	RESPONDENT
BRIDGEFIELD EMPLOYERS INS. CO., Insurance Carrier	RESPONDENT
SUMMIT CONSULTING, LLC, Third Party Administrator	RESPONDENT

OPINION FILED APRIL 4, 2023

Hearing before Administrative Law Judge Steven Porch on March 22, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

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

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by Respondent on January 20, 2023. No testimony was taken. The evidentiary record consists of Respondent's Exhibit 1 and oral argument of the Respondent. Claimant's attorney waived her appearance for the March 22, 2023, hearing. 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 has alleged she has sustained injuries to her back and whole body on November 11, 2021, during the course and scope of her employment. Respondent denied this

claim in its entirety. Claimant filed an AR-C with the Commission, through counsel, on July 1, 2022, for benefits. Since then, the Claimant has not requested a hearing and no efforts have been made to prosecute this claim.

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.
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.

At the hearing, Respondent's counsel was present. Claimant's attorney waived her appearance after being duly served with notice. However, Claimant's attorney did respond to the Motion to Dismiss with an email dated February 10, 2023, where she wrote, "I do not object to the respondents Motion to Dismiss Without Prejudice." Based on this response and the lack of prosecution, I find this claim should 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 *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982); *Hutchinson v. North Arkansas Foundry*, Claim No. D902143 (Full Commission

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Opinion filed October 23, 1991). Considering this preference, I find 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