

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H104999

PAUL M. LILLY, EMPLOYEE

CLAIMANT

DOMINO'S, EMPLOYER

RESPONDENT

TECHNOLOGY INS. CO., CARRIER

RESPONDENT

OPINION FILED MARCH 4, 2022

Hearing before Administrative Law Judge O. Milton Fine II on March 3, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. William C. Frye, Attorney at Law, North 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 March 3, 2022, in Little Rock, 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 file on this claim has been incorporated herein in its entirety by reference.

The record reflects the following procedural history:

On June 16, 2021, Claimant filed a Form AR-C in this case, alleging that he injured his lower back in a work-related motor vehicle accident on April 11, 2021.

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Per the Form AR-2 that was filed on July 2, 2021, Respondents controverted the claim because “[t]o date we do not have sufficient information to support disability.”

Respondents’ counsel entered his appearance on January 5, 2022; and that same day, he filed on behalf of his clients the instant motion to dismiss. Therein, they alleged that dismissal of the claim was warranted because “no action has been taken in this matter since the AR-C was filed on June 16, 2021 . . .” The file was assigned to me on January 6, 2022; and that same day, my office wrote Claimant, asking for a response to the motion within 20 days. This letter was sent by both first-class and certified mail to the address for Claimant listed on his Form AR-C. The certified letter was returned to the Commission on February 7, 2022. However, the first-class letter was not returned. Regardless, no response to the motion was forthcoming from Claimant.

On January 31, 2022, I scheduled a hearing on Respondents’ motion for March 3, 2022, at 11:30 a.m. at the Commission in Little Rock. The hearing notice was sent to Claimant by certified and first-class mail to the same address as before. In this instance, Claimant signed for the certified letter, on February 11, 2021. The first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing proceeded as scheduled on March 3, 2022. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13.

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 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; the claim is hereby dismissed without prejudice under AWCC R. 099.13.

III. DISCUSSION

AWCC 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, 929 S.W.2d 730.

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 matter—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 March 3, 2022, hearing to argue against its dismissal) since he filed the Form AR-C on June 16, 2021. Thus, the evidence preponderates that dismissal is justified under Rule 13; and it is so entered. Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9-702(a)(4) (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. 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 at the hearing asked for a

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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).