

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H303952**

ANDREW I. LOPEZ, EMPLOYEE

CLAIMANT

**RHODES MACHINE SHOP, INC.,
EMPLOYER**

RESPONDENT

**FEDERATED MUTUAL INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED APRIL 5, 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. Rick Behring, Jr., 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, email correspondence and United States Postal Service ("USPS") responses, consisting of four pages; and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of 14 numbered pages.

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The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on July 18, 2023, Claimant purportedly suffered an injury to his right hand/upper extremity at work on June 16, 2023, when a piece of pipe that he had been welding fell and struck him. According to the Form AR-2 that was filed on June 30, 2023, Respondents controverted the claim in its entirety.

On June 22, 2023, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C. Therein, he alleged that his client was entitled to the full range of initial benefits as a result of his alleged right hand injury. No hearing request accompanied this filing. Respondents' counsel entered his appearance on July 18, 2023, and thereafter propounded discovery to Claimant. Those discovery requests went unanswered.

On December 18, 2023, Peoples moved to withdraw from the case. In an Order ended on January 9, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until January 19, 2024. On that date, Respondents filed the instant motion and brief in support thereof, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). My office wrote Claimant on January 24, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Blytheville address of Claimant listed in the file

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and his Form AR-C. USPS could not confirm that Claimant signed for the certified letter; but the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On February 13, 2024, a hearing on the Motion to Dismiss was scheduled for April 5, 2024, at 11:30 a.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. Once again, USPS could not confirm that Claimant claimed the certified letter; but the one sent by first-class mail was not returned to the Commission.

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 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.

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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 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

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pursuit of it (including appearing at the April 5, 2024, hearing to argue against its dismissal) since the filing of his Form AR-C on June 22, 2023. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702.

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

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

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).