

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H200476

BEN McALISTER, EMPLOYEE

CLAIMANT

**SYSTEMS LLC,
EMPLOYER**

RESPONDENT

**TRAVELERS INDEMNITY CO.,
CARRIER**

RESPONDENT

OPINION FILED JULY 14, 2022

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 13, 2022, in Little Rock, Pulaski 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 a Motion to Dismiss by Respondents. A hearing on the motion was conducted on July 13, 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. At Respondents' request, the Commission's file on the claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1, a compilation of pleadings, forms and correspondence related to the claim, consisting of 12 unnumbered pages.

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The record reveals the following procedural history:

The Form AR-1, filed on January 18, 2022, reflects that Claimant purportedly injured his right foot when it was struck by a falling object at work. Per the Form AR-2 filed on January 20, 2022, Respondents accepted the claim as a compensable and paid medical and indemnity benefits pursuant thereto. Their attorney entered his appearance before the Commission on March 14, 2022.

Claimant, through then-counsel Laura Beth York, filed a Form AR-C on April 7, 2022, asking for the full range of initial and additional benefits and alleging that he injured “his left foot and other whole body.” Respondents, in a letter to the Commission that same day, reiterated that they accepted the claim and had initiated payment of benefits.

On April 26, 2022, York moved to withdraw from the case. In an order entered on May 10, 2022, the Full Commission granted the motion.

Respondents filed the instant Motion to Dismiss on May 18, 2022. The file was assigned to Administrative Law Judge Chandra Black that same day; and on May 19, 2022, she wrote Claimant, asking for a response to the motion within 20 days. The letter was sent via first-class and certified mail to the address listed for Claimant on the Form AR-C. While the certified letter was returned to the Commission, unclaimed, the first-class letter was not returned. On June 9, 2022, a hearing on the motion was scheduled for July 13, 2022, at 10:00 at the Commission in Little Rock. As with the previous correspondence, this notice was sent to Claimant by both certified and first-class mail. In this instance, Claimant

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signed for the certified letter on June 23, 2022; and the first-class letter was not returned. Thus, the evidence preponderates that he received the hearing notice.

The hearing proceeded as scheduled on July 13, 2022, before the undersigned administrative law judge. 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 claim.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim.
4. Respondents have proven by a preponderance of the evidence that this claim should be dismissed under AWCC R. 099.13.
5. The claim is hereby dismissed *without prejudice*.

III. DISCUSSION

Rule 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).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that this claim should be dismissed. 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 pursuit of it (including appearing at the July 13, 2022, hearing to argue against its dismissal) since the filing of his Form AR-C on April 7, 2022. Thus, 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). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS

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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)). At the hearing, Respondents requested a dismissal without prejudice. Based on the foregoing, 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).