

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H003238

ANGELA L. PIRANI, EMPLOYEE	CLAIMANT
WEST MEMPHIS SCH. DIST., SELF-INSURED EMPLOYER	RESPONDENT
ARK. SCHOOL BDS. ASSN., CARRIER	RESPONDENT

OPINION FILED JUNE 2, 2022

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 27, 2022, in Marion, Crittenden County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on May 27, 2022, in Marion, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Ms. Melissa Wood, Attorney at Law, of Little Rock, Arkansas. The record consists of Respondents' Exhibit 1, pleadings, forms and correspondence related to the claim, consisting of one index page and ten numbered pages thereafter. In addition, without objection, the Commission's file has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on May 29, 2020, Claimant purportedly fractured her ankle at work on May 22, 2020,

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when she was walking up the stairs at West Junior High School in West Memphis. According to the Form AR-2 that was filed on June 3, 2020, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

On October 4, 2021, Claimant (through then-counsel Mark Peoples) filed a Form AR-C, requesting a range of additional benefits. In an email accompanying the filing, Peoples made clear that no hearing was being requested on the claim. In a letter to the Operations & Compliance Division of the Commission on October 11, 2021, Respondents reiterated that they “have accepted this claim as compensable, and all reasonable, necessary and authorized medical expenses and indemnity benefits have been paid.”

On February 21, 2022, Peoples filed a Motion to Withdraw from his representation of Claimant. In this motion, he stated: “Claimant has reached MMI [maximum medical improvement], been assigned [an] impairment rating, and [R]espondents are paying out her PPD [permanent partial disability benefits]. No issues remain in dispute.” In an Order entered on March 4, 2022, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record further reflects that on April 4, 2022, Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal was warranted under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13 because “Claimant has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” On April 5, 2022, my office

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wrote Claimant, asking for a response to the motion within twenty (20) days. This correspondence was sent by first-class and certified mail to the address for her listed in the file and on her Form AR-C. Claimant signed for the certified letter on April 7, 2022; and the first-class letter was not returned. Nonetheless, no response was forthcoming from her.

On April 27, 2022, a hearing on the motion was scheduled for May 27, 2022, at 10:30 a.m. at the Crittenden County Courthouse in Marion. The notice was sent to Claimant by first-class and certified mail. The certified letter went unclaimed. Regardless, the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled on May 27, 2022. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authorities.

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.

3. Respondents have proven by a preponderance of the evidence that this claim should be dismissed under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted.
5. This claim is hereby dismissed without prejudice.

III. DISCUSSION

AWCC 099.13 provides:

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). (Emphasis added) In turn, Ark. Code Ann. § 11-9-702(d) (Repl. 2012) reads:

(d) 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.

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” 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).

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The evidence again shows that Claimant has taken no action in pursuit of her claim since the filing of her Form AR-C on October 4, 2022. Thus, the evidence preponderates that dismissal is warranted under Rule 13. This motion is hereby granted under that provision.

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)). 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

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, the Motion to Dismiss is hereby granted; and this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

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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O. MILTON FINE II
Chief Administrative Law Judge