

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H307355**

JOHN G. PARKER, EMPLOYEE	CLAIMANT
BALDWIN & SHELL CONSTR. CO., EMPLOYER	RESPONDENT
OLD REPUBLIC INS. CO., CARRIER	RESPONDENT

OPINION FILED JULY 11, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 11, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Eric Newkirk, 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 July 11, 2024, 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. Admitted into evidence without objection were Commission Exhibit 1 and Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 16 and 13 pages, respectively.

PARKER – H307355

The record reveals the following procedural history:

The First Report of Injury or Illness, filed on November 17, 2023, reflect that Claimant purportedly suffered an injury to his upper extremity at work on July 4, 2023. Per the Form AR-2 that was also filed on November 17, 2023, Respondents denied the claim, asserting that the injury took place at Claimant's home.

On November 9, 2023, Claimant filed a Form AR-C, alleging that while his alleged right arm injury occurred while he was moving a tree branch, it was the culmination of an injurious process involving his hanging of solid core doors over a period of time. No hearing request accompanied this filing. Respondents' counsel entered his appearance on May 7, 2024.

On May 9, 2024, Respondents filed the instant Motion to Dismiss and brief in support thereof under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012), contending that no activity has taken place on the case since the filing of the Form AR-C. On May 13, 2024, my office wrote Claimant, requesting a response to the motion within 20 days. This correspondence was sent by both certified and first-class mail to the North Little Rock address for Claimant listed in the file and on his Form AR-C. The certified letter was returned to the Commission, undelivered, on June 24, 2024; but the first-class correspondence was not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

PARKER – H307355

On June 7, 2024, a hearing on Respondents' motion was scheduled for July 11, 2024, at 10:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, the United States Postal Service could not verify whether the certified letter had been claimed. But as before, the one sent via first class was not returned.

The hearing proceeded as scheduled on July 11, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the provisions cited above.

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. Claimant has failed to prosecute this claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.
5. The claim is hereby dismissed *without prejudice*.

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).

The evidence adduced at the hearing shows that Claimant has taken no action in pursuit of his claim since the filing of his Form AR-C on November 9, 2023. Moreover, he failed to appear at the hearing to argue against dismissal of the claim, despite the evidence showing that both he and Respondents were provided reasonable notice of the Motion to Dismiss and of the hearing thereon. 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

PARKER – H307355

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, 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).