

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H205999**

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| HELEN D. PEASTER, EMPLOYEE | CLAIMANT |
| CITY OF LITTLE ROCK, SELF-INSURED EMPLOYER | RESPONDENT |
| RISK MGMT. RESOURCES, THIRD-PARTY ADMINISTRATOR | RESPONDENT |

OPINION FILED DECEMBER 4, 2023

Hearing before Administrative Law Judge O. Milton Fine II on November 29, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

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

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. Claimant gave testimony at the hearing. The evidentiary record consists not only of that testimony, but also of Commission's Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 12 numbered pages; and Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of one index page and 16 numbered pages thereafter.

The record reflects the following procedural history: Per the First Report of Injury or Illness filed on August 25, 2022, Claimant suffered an injury to her right elbow on April 13, 2022, while using a sledgehammer at work. As they acknowledged at the hearing, Respondents accepted the claim as a medical-only

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one and paid benefits pursuant thereto. On August 22, 2022, Claimant filed a Form AR-C in connection with this matter. Therein, she requested temporary partial, temporary total, and permanent partial disability benefits, along with payment of medical expenses.

Also on August 22, 2022, Claimant requested a one-time change of physician to Dr. Brian Norton. In an order entered on September 26, 2022, the Medical Cost Containment Division granted the request and scheduled her for an appointment with Norton for October 5, 2022.

Respondents on September 20, 2023, moved for a dismissal of the claim without prejudice under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) because of, inter alia, Claimant's alleged failure to make a bona fide hearing request within the previous six months. My office wrote Claimant on September 21, 2023, asking for a response to the motion within 20 days. The letter was sent via first-class and certified mail to the address for Claimant listed in the file. Someone with an illegible signature signed for the letter on September 26, 2023; and the first-class letter was not returned. Nonetheless, no response from Claimant was forthcoming.

On October 12, 2023, I scheduled a hearing on the Motion to Dismiss for November 29, 2023, at 11:00 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to the parties by first-class and certified mail; and as alluded to above, both appeared before me at the appointed time. I note that the certified mail receipt for Claimant, dated October 17, 2023, bears a similar illegible

signature to the one for the 20-day letter; and she confirmed receipt of the hearing notice. Respondents asked for dismissal of the claim without prejudice under Ark. Code Ann. § 11-9-702(d) (Repl. 2012) and AWCC R. 099.13.

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 under AWCC R. 099.13.
3. The Commission is authorized to dismiss claims lacking a justiciable issue pursuant to AWCC R. 099.13.
4. This claim should be, and hereby is, dismissed *without prejudice* pursuant to AWCC R. 099.13 because of the lack of a justiciable issue.
5. Because of the above finding, Ark. Code Ann. § 11-9-702(d) (Repl. 2012) will not be addressed.

III. DISCUSSION

Arkansas Code Annotated § 11-9-702(d) (Repl. 2012) provides as follows:

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

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hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

In addition, AWCC R. 099.13 provides in relevant part:

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 Arkansas Court of Appeals in *Johnson* held that a claim could be dismissed for lack of prosecution based on the fact that there is no justiciable issue. The authority for doing so comes under Rule 13, which the Commission promulgated under Ark. Code Ann. § 11-9-205(a)(1)(A) (Repl. 2012). This provision authorizes it “[t]o make such rules and regulations as may be found necessary[.]” *See Dura Craft Boats, Inc. v. Daugherty*, 247 Ark. 125, 444 S.W.2d 562 (1969); *Johnson, supra*. *Contra Dillard v. Benton Cty. Sheriff’s Off.*, 87 Ark. App. 379, 192 S.W.3d 287 (2004)(“Rule 13 . . . allows a dismissal . . . pursuant to Ark. Code Ann. § 11-9-702(b)(4), the portion of the statute relating to additional benefits”). Certainly, such a claim could be re-filed if a justiciable issue arises, provided that all other prerequisites for a cognizable claim are met.

At the hearing, Claimant during her testimony conceded that there are no justiciable issues at present regarding this claim. More importantly, she testified

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that she has received all benefits that she was seeking under the claim and does not object to its dismissal.

I credit Claimant's testimony. Under *Johnson, supra*, this claim should thus be dismissed under Rule 13 due to the lack of ripeness. Because of this finding, it is unnecessary to address the application of § 11-9-702(d).

That, however, leaves the question of whether the dismissal 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). This includes claims dismissed under Rule 13. *Johnson, supra*. In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, the Commission wrote: "In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice." (citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982); *Hutchinson v. North Arkansas Foundry*, Claim No. D902143 (Full Commission Opinion filed October 23, 1991)). In light of this preference, along with facts of this case and Respondents' agreement that dismissal should be without prejudice, the dismissal of this claim is hereby *without prejudice*.¹

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).

IV. 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.

O. MILTON FINE II
Chief Administrative Law Judge