

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H201245**

RICKY RICE, EMPLOYEE	CLAIMANT
DE WAFELBAKKERS, INC., EMPLOYER	RESPONDENT
CHUBB INDEMN. INS. CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 23, 2022

Hearing before Chief Administrative Law Judge O. Milton Fine II on September 22, 2022, in Little Rock, Pulaski 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 a motion to dismiss by Respondents. A hearing on the motion was conducted on September 22, 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. Also admitted into evidence was Respondents' Exhibit 1, forms, pleadings and correspondence related to this case, consisting of nine unnumbered pages.

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The record reveals the following procedural history:

The First Report of Injury or Illness, filed on February 9, 2022, reflects that Claimant purportedly suffered an injury to his hip when he slipped and fell at work on December 7, 2021. Per the Form AR-2 filed on that same day, Respondents controverted the claim in its entirety. Claimant filed a Form AR-C on March 17, 2022, asking for initial benefits and stating: “While walking through the pre-mix room slipped and fell on my butt. Got back up thinking nothing was wrong until it hit me later on.” In an amended Form AR-2 filed on March 23, 2022, Respondents again made the representation that they were fully controverting the claim. Respondents’ counsel reiterated this in his entry of appearance, which he made on April 1, 2022.

On June 14, 2022, Respondents moved for an order compelling Claimant to respond to discovery. The evidence reflected that despite discovery being outstanding in excess of 60 days, he had not responded. In an Order entered on June 20, 2022, the Commission directed Claimant to respond to the discovery within 30 days. However, except for a signed authorization, Claimant did not comply with the Order.

The record reflects that no further action was taken on the case until July 27, 2022, when Respondents filed the instant motion to dismiss under, inter alia, Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13. On July 29, 2022, my office wrote Claimant, requesting a response to the motion within 20 days. This correspondence was sent to him by both certified and first-class mail at the

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address listed on his Form AR-C. While the United States Postal Service could not confirm whether Claimant claim the certified letter, the first-class letter was not returned. Regardless, no response from Claimant was forthcoming.

On August 24, 2022, a hearing on Respondents' motion was scheduled for September 22, 2022, at 9:30 a.m. at the Commission. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. The certified letter was returned, undelivered, on September 19, 2022, while the first-class letter was never returned.

The hearing proceeded as scheduled on September 22, 2022. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under, inter alia, Rule 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. Claimant has failed to prosecute his claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.

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5. The claim is hereby dismissed *without prejudice*.
6. Claimant's other bases for requesting dismissal are moot and will not be addressed.
7. Respondents' motion for sanctions and costs against Claimant pursuant to Ark. R. Civ. P. 37 is hereby denied 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)(discussing, *inter alia*, Rule 13).

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 September 22, 2022, hearing to argue against its dismissal) since the he filed his Form AR-C on March 17, 2022. Thus, dismissal is warranted—and is hereby granted—under Rule 13. For that reason, it is unnecessary to address the application of the other provisions cited by Respondents in their Motion to Dismiss.

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss

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claims with prejudice. See *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 AWCC 226, 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)). Respondents at the hearing asked for a dismissal with prejudice. Based on the foregoing, I respectfully disagree. The dismissal of this claim should be and hereby is entered *without prejudice*.¹

Respondents have also asked for sanctions and costs in connection with Claimant’s failure to respond to discovery under Ark. R. Civ. P. 37, in the event that only a dismissal without prejudice is granted. That request is respectfully denied without prejudice.

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).