

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H304677**

MARILYN S. SNOW, EMPLOYEE	CLAIMANT
PDC CO., EMPLOYER	RESPONDENT
CINCINNATI CASUALTY CO., CARRIER	RESPONDENT

OPINION FILED APRIL 26, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on April 26, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Karen H. McKinney, 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 April 26, 2024, in Forrest City, 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, forms, pleadings, and correspondence related to this claim, consisting of 27 pages.

The record reveals the following procedural history:

The First Report of Injury or Illness, filed on August 2, 2023, reflects that Claimant purportedly suffered a broken shoulder on April 3, 2023, when she

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suffered a stroke in the bathroom at work and fell. Per the Form AR-2 filed on July 26, 2023, Respondents controverted the claim in its entirety, asserting that the alleged injury was not incurred in the scope and course of her employment.

On July 26, 2023, Claimant filed a Form AR-C and attachments thereto, alleging that she was entitled to the full range of initial and additional benefits for her alleged shoulder injury. No hearing request accompanied this filing. Respondents' counsel made her entry of appearance on August 9, 2023. On August 22, 2023, Respondents propounded written discovery to Claimant. As of the date of the hearing, that discovery remains unanswered.

The record reflects that no further action was taken on the case until January 30, 2024, when Respondents filed the instant Motion to Dismiss and exhibits thereto, contending that Claimant has not taken any action in furtherance of her claim since its filing. On that same day, 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 Wynne address for Claimant listed in the file and on her Form AR-C. Someone with an illegible signature claimed the certified letter on February 5, 2024, and the first-class correspondence was not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

On March 11, 2024, a hearing on Respondents' motion was scheduled for April 26, 2024, at 10:30 a.m. at the St. Francis County Courthouse in Forrest City. The Notice of Hearing was sent to Claimant by certified and first-class mail to the

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same address as before. In this instance, it could not be verified whether Claimant signed for the certified letter; but again, the first-class letter was not returned.

The hearing proceeded as scheduled on April 26, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012), along with plus 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. Claimant has failed to prosecute her 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)(discussing, *inter alia*, Rule 13).

The evidence adduced at the hearing shows that Claimant has taken no action in pursuit of her claim since the filing of her Form AR-C on July 26, 2023. Moreover, she failed to appear on the hearing to argue against dismissal of the claim, despite the evidence showing that both she 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 applicability of Ark. Code Ann. § 11-9-702(d) (Repl. 2012).

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

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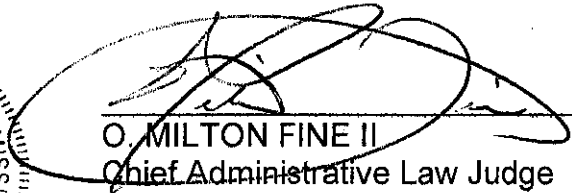
find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

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).