

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H102239**

**SANDRA K. SCOTT, EMPLOYEE**

**CLAIMANT**

**ARK. ENT. FOR THE DEV. DISABLED,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**RISK MGMT. RESOURCES,  
THIRD-PARTY ADMR.**

**RESPONDENT**

**OPINION FILED FEBUARY 9, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on February 8, 2024, in Little Rock, Pulaski 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 a Motion to Dismiss by Respondents. The evidentiary record consists Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of one index page and 12 numbered pages thereafter. Also, in order to address adequately this matter under Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must "conduct the hearing . . . in a manner which best ascertains the rights of the parties"), I have blue-backed to the record certain documents from the Commission's file on the claim, consisting of three pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, \_\_\_ S.W.3d \_\_\_, this blue-backed exhibit has been served on the parties in conjunction with this opinion.

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The record reflects the following procedural history: On March 3, 2021, Claimant filed her first Form AR-C in connection with this matter. Therein, she alleged that she injured her left shoulder at work on January 9, 2020, and asked for the full range of initial benefits. This was expanded to include the full range of additional benefits in a second Form AR-C, filed on her behalf by her then-counsel, Laura Beth York, on March 23, 2021.

The claim was heard before the undersigned on September 23, 2021. On November 29, 2021, an opinion was issued thereon that contained the following Findings of Fact and Conclusions of Law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted[:]
  - a. The employer/employee/carrier relationship existed at all relevant times, including January 9, 2020, when Claimant sustained a compensable injury to her left shoulder in the form of a sprain.
  - b. Claimant's average weekly wage of \$845.45 entitles her to compensation rates of \$563.00/\$422.00.
  - c. In the event that Claimant is found to be entitled to temporary total disability benefits, the parties will be able to confer and

agree on the applicable dates for which she would be entitled to such benefits.

3. Claimant has not proven by a preponderance of the evidence that she sustained a compensable left shoulder injury by specific incident in the form of a rotator cuff tear.
4. Claimant has not proven by a preponderance of the evidence that she is entitled to reasonable and necessary treatment of her left rotator cuff tear.
5. Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits.
6. Claimant has not proven by a preponderance of the evidence that she is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).

Thereafter, on December 9, 2021, York filed a motion to withdraw from the case. In an order entered on December 21, 2021, the Full Commission granted the motion under AWCC Advisory 2003-2.

Claimant, now *pro se*, pressed on with her appeal of the decision by the undersigned. On August 22, 2022, the Full Commission entered an opinion in which it reversed the administrative law judge opinion. *See Scott v. Ark. Ent. for the Dev. Disabled*, 2022 AR Wrk. Comp. LEXIS \_\_\_\_\_, Claim No. H102239 (Full Commission Opinion filed August 22, 2022). This, in turn, was appealed to the Arkansas Court of Appeals. On October 25, 2023, the court reversed the ruling of

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the Full Commission. *See Ark. Enters. for the Developmentally Disabled v. Scott*, 2023 Ark. App. 468, 676 S.W.3d 386. This essentially left Claimant strictly with an accepted claim for a left shoulder sprain.

Respondents on November 29, 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 November 30, 2023, asking for a response to the motion within 20 days. The letter was sent via first-class and certified mail to the Benton address for Claimant listed in the file and on her Forms AR-C. Claimant signed for the certified letter on December 2, 2023; and the first-class mailing was not returned. Regardless, no response to the Motion to Dismiss was forthcoming from her.

On January 3, 2024, I scheduled a hearing on the Motion to Dismiss for February 8, 2024, at 9:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to the parties by first-class and certified mail. In this instance, the certified letter went unclaimed; but as before, the first-class mailing was not returned. Thus, the evidence preponderates that Claimant received notice of the hearing.

The hearing on the motion proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the aforementioned authorities.

**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. The evidence preponderates that Claimant has failed to prosecute her claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; the claim is hereby dismissed *without prejudice* under AWCC R. 099.13.

**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).

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of the

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claim—by a preponderance of the evidence. This standard 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).

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 her claim because she has taken no further action in pursuit of it (including appearing at the February 8, 2024, hearing to argue against its dismissal) since the mandate issued from the Arkansas Court of Appeals on November 28, 2023. 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 (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*.<sup>1</sup>

**IV. CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits is hereby dismissed *without prejudice*.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge

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<sup>1</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).