

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H303519**

WILLIE L. THOMPSON, EMPLOYEE	CLAIMANT
UNION COMPRESS WHSE. WEST MEMPHIS LLC, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INS. CO., CARRIER	RESPONDENT

OPINION FILED JUNE 14, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on June 14, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Zachary F. Ryburn, 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 June 14, 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 and Respondents', forms, pleadings, and correspondence related to this claim, consisting of twenty-five (25) and seven (7) pages, respectively.

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The record reveals the following procedural history:

The First Report of Injury or Illness, filed on June 1, 2023, reflect that Claimant purportedly suffered an injury in the form of ulnar compression syndrome at work on or around May 19, 2023. Per the original and amended Forms AR-2 filed on June 1, 2023, and June 8, 2023, respectively, Respondents initially accepted the claim as a medical-only one before also paying temporary total disability benefits pursuant thereto.

On July 12, 2023, through then-counsel Mark Peoples, Claimant filed a Form AR-C, alleging that he was entitled to the full range of additional benefits in connection with the alleged gradual onset injury to his arm. Peoples in an email accompanying this filing made clear that no hearing was being requested at that time. Curiously, while the adjustor wrote the Commission on July 17, 2023, to reiterate that the claim had been accepted and that both medical and temporary total disability benefits were being furnished, just one week later, in a second amended Form AR-2 filed on July 24, 2023, Respondents reversed course and controverted the claim in its entirety. Respondents' counsel entered his appearance on July 20, 2023.

On November 13, 2023, the parties filed a Joint Petition. The matter was assigned to me, and I scheduled a hearing thereon for December 22, 2023, in Marion, Arkansas. However, the parties notified me that the petition was being withdrawn, so I cancelled the hearing. On January 2, 2024, the file was returned to the Commission's general files.

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On February 20, 2024, Peoples moved to withdraw from his representation of Claimant. In an Order entered on March 20, 2024, the Full Commission granted the Motion to Withdraw under AWCC Advisory 2003-2.

The record reflects that no further action was taken on the case until March 22, 2024, when Respondents filed the instant Motion to Dismiss, contending that dismissal of the claim was warranted due to Claimant's failure to prosecute it. On March 26, 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 Little Rock address for Claimant listed in the file and on his Form AR-C. Someone with an illegible signature signed for the certified letter on April 1, 2024; and the first-class correspondence was not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

On April 23, 2024, a hearing on Respondents' motion was scheduled for June 14, 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 same address as used previously. As before, the certified letter was claimed by someone with an illegible signature (by all appearances, the same individual who claimed the 20-day letter) on April 29, 2024; and the first-class letter was not returned.

The hearing proceeded as scheduled on May 2, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under 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 his 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 arguably taken no action in pursuit of his claim since the filing of his Form AR-C on July 12, 2023. To the extent that his efforts to resolve the claim amicably were

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prosecutorial, those ended with the withdrawal of the Joint Petition before it was to be heard on December 22, 2023. Moreover, Claimant failed to appear on the June 14, 2024, 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.

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 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*.

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).

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IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge