

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H007900**

<b>LAWRENCE WATSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>DOBBS PETERBILT WEST MEMPHIS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>LUBA CASUALTY INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MARCH 28, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on March 28, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Daniel E. Wren, Attorney at Law, Little Rock, Arkansas (neither appearing).

Respondents represented by Mr. Jarrod S. Parrish, 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 March 28, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant and his counsel waived their appearance at the hearing. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence, reports, and forms related to this claim, consisting of one index page and 21 numbered pages thereafter.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on October 16, 2020, Claimant purportedly suffered an injury to his right shoulder on October 6, 2020, when he was removing an oil pan at work. According to the Form AR-2 that was filed on

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October 20, 2020, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

On February 10, 2023, Claimant through counsel filed a Form AR-C, requesting the full range of initial and additional benefits in connection with his alleged shoulder injury. No hearing request accompanied this filing. Respondents' counsel made their entry of appearance on February 14, 2023.

The record reflects that no further activity took place on the claim until September 28, 2023. On that date, Respondents filed the instant Motion to Dismiss. Therein, they asked that the claim be dismissed under AWCC R. 099.13 and/or Ark. Code Ann. § 11-9-702 (Repl. 2012) because "Claimant has not sought any type of bona fide hearing before the Workers' Compensation Commission over the last six months." The file was assigned to me on September 28, 2023; and on that same date, my office wrote Claimant and his counsel, requesting a response to the motion within 20 days. Counsel did so in a response pleading filed on October 18, 2023. Therein, he objected to dismissal and argued the following: (1) the "parties have been active in negotiations"; and (2) "Claimant intends to file [a] Prehearing Questionnaire [response] on Wage Loss in the next 10 days." I interpreted this as a hearing request, and informed the parties on October 18, 2023, that I would take the motion under advisement. Prehearing questionnaires were issued to the parties. Claimant filed a timely response thereto on November 8, 2023; and Respondents followed suit on November 17,

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2023. Following a prehearing telephone conference on December 4, 2023, a scheduled a hearing for February 23, 2024, at 10:30 a.m. at the Crittenden County Courthouse in Marion on the following issues:

1. What was Claimant's average weekly wage?
2. Whether Claimant is entitled to additional indemnity benefits based upon earlier payment of them at a lower rate that that established by Issue No. 1.
3. Whether Claimant is entitled to wage loss disability benefits.
4. Whether Claimant is entitled to a controverted attorney's fee.

Hearing preparation continued. On February 16, 2024, Respondents filed the indexes for their medical and non-medical exhibits, which they furnished to Claimant. However, on February 21, 2024, Claimant's counsel emailed the following:

Judge Fine[:]

Do [sic] to very recent changes in my client's employment status we no longer need a hearing. I apologize for the late cancellation. I will pay the court reporter's fee. At this time we would ask that the case be returned to the general files. I have discussed this with [Respondents' counsel] and he has no objection.

Based on this, the hearing was cancelled.

Respondents' counsel on that same date renewed their Motion to Dismiss. The hearing was initially scheduled on February 26, 2024, for April 12, 2024, at 12:30 p.m. in the St. Francis County Courthouse in Forrest City. However, after

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the office of Claimant’s counsel on February 28, 2024, emailed me that both he and Claimant “will be waiving their appearance” at the hearing, it was reset for March 14, 2023, at 10:00 a.m. at the Commission in Little Rock. But after Respondents’ counsel developed a conflict with that time, it was reset once more for March 28, 2024, at 9:30 a.m. at the Commission in Little Rock.

The hearing on the Motion to Dismiss proceeded as scheduled on March 28, 2024. As noted above, both Claimant and his counsel waived their appearance. 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 this 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 this matter—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 this claim. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702.

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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. Based on the foregoing, I agree and find that the dismissal of these claims 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).