

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H404533**

ERICK E. RAMIREZ ALVAREZ, EMPLOYEE

CLAIMANT

**AFCO STEEL, INC.,
EMPLOYER**

RESPONDENT

**FARMINGTON CASUALTY CO.,
CARRIER**

RESPONDENT

OPINION FILED APRIL 24, 2025

Hearing before Administrative Law Judge O. Milton Fine II on April 24, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on April 24, 2025, 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. Admitted into evidence was Respondents' Exhibit 1, forms, pleadings, reports, and correspondence related to this claim, consisting of 11 numbered pages. 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"), and without objection, I have blue-backed to the record documents from the Commission's file on the claim, consisting of 15

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pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

The record shows the following procedural history:

Per the First Report of Injury or Illness filed on July 22, 2024, Claimant purportedly suffered an injury to his left ankle at work on June 22, 2024, while “jumping from one beam to another.” According to the Form AR-2 that was filed on July 31, 2024, Respondents accepted the claim as a medical-only one.

On July 16, 2024, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C, requesting the full range of additional benefits and alleging that he actually injured both ankles in the June 22, 2024, incident. Counsel in an email accompanying this filing stated that he was “not asking for a hearing.” Respondents’ counsel entered their appearance on September 12, 2024; and on that same day, he propounded discovery to Claimant. That discovery remains unanswered.

On December 2, 2024, Peoples moved to withdraw from his representation of Claimant. In an Order entered on December 16, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until February 3, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 “for lack of prosecution.” My office

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wrote Claimant on February 12, 2025, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Little Rock, Arkansas address for her listed in the file and on his Form AR-C. The certified letter was returned to the Commission, unclaimed, on March 18, 2025; but the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On March 10, 2025, a hearing on the Motion to Dismiss was scheduled for April 24, 2025, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant via first-class and certified mail to the same address as before. As before, the certified letter was returned to the Commission, unclaimed, on April 11, 2025, while the first-class letter was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the foregoing authority.

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 matter.

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 his claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this 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 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)

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Claimant has failed to pursue her claim because he has taken no further action in pursuit of it (including appearing at the April 24, 2025, hearing to argue against its dismissal) since the filing of his Form AR-C on July 16, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the argument made under § 11-9-702(a)(4) will not be addressed.

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

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).