

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H401705**

KARISHA BROWN, EMPLOYEE

CLAIMANT

**CENTRAL ARK. OPHTHALMOLOGY,
EMPLOYER**

RESPONDENT

**UNION INS. CO. OF PROVIDENCE,
CARRIER**

RESPONDENT

OPINION FILED AUGUST 19, 2025

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 14, 2025, in Little Rock, Pulaski 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 Respondents' Motion to Dismiss. A hearing on the motion was conducted on August 14, 2025, in Little Rock, Arkansas. Claimant failed to appear at the hearing. Respondents were represented at the hearing by Ms. Karen H. McKinney, Attorney at Law, of Little Rock, Arkansas. The record consists of the following: Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 34 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 forms, pleadings, and correspondence from the Commission's file on the claim, totaling 18 pages. In

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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. In addition, the transcript and blue-back of the January 30, 2025, hearing on this claim has been incorporated herein by reference.

The evidence reflects that on March 8, 2024, Claimant filed a Form AR-C, alleging that she was entitled to initial medical and temporary partial disability benefits for her injuries she allegedly suffered on October 17, 2023. She related:

Attacked and bitten by Dr. Roza[']s [b]ig [d]og walking down hallway to my desk after delivering patient[']s to the [d]octor[']s offices. Dog jumped on my back[,] scratching me[,] pushing me[,] and bit my back of [r]ight arm.

Per the First Report of Injury or Illness filed on March 21, 2024, Claimant purportedly suffered injuries at work on October 17, 2023, while returning patient charts. According to the Form AR-2 that was also filed on March 21, 2024, Respondents controverted the claim in its entirety.

The record reflects that no further activity occurred on this claim until October 10, 2024, when Respondents filed the instant Motion to Dismiss under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702 (Repl. 2012). Therein, they alleged that more than six months had elapsed since the filing the Form AR-C without Claimant requesting a hearing thereon. The file was reassigned to me on October 11, 2024; and on October 14, 2024, my office wrote Claimant, requesting a response to the motion within 20 days. The letter was sent to Claimant by first-class and certified mail to the

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address she listed on the Form AR-C: 1502 Green Mountain Drive, Little Rock, Arkansas 72211. However, both items of correspondence were returned to the Commission with the notation “INSUFFICIENT ADDRESS.” (Emphasis in original) Unsurprisingly, no response from Claimant was forthcoming.

On November 6, 2024, this hearing was initially scheduled for December 12, 2024, at 9:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant at the same address as used previously. As before, both the certified and first-class letters were returned. On December 10, 2024, I emailed Respondents’ counsel that the notations on the returned correspondence led me to research and confirm that Claimant resided at an apartment complex, and that her unit number was 172. For that reason, I canceled the hearing and issued a new 20-day letter with the enhanced address. But once again, the United States Postal Service returned both the certified and first-class letters, explaining that they were “NOT DELIVERABLE AS ADDRESSED.” (Emphasis in original) Again—unsurprisingly—Claimant did not file the requested response to Respondents’ motion.

On December 30, 2024, the hearing on the Motion to Dismiss was rescheduled for January 30, 2025, at 9:30 a.m. at the Commission in Little Rock. But in this instance, while the Notice of Hearing was again sent to Apartment 172 and the address listed on Claimant’s Form AR-C, the one sent by first-class mail managed to be delivered to her. She brought it to the hearing, crumpled, and

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testified that it along with a number of other mail items had been delivered to her belatedly en masse.

The hearing took place as scheduled. Both parties appeared, and Claimant testified. Respondents argued for dismissal under both § 11-9-702(a)(4) & (d) (Repl. 2012) and Rule 13. In an opinion handed down on February 4, 2025, I denied the motion and issued prehearing questionnaires to the parties the next day.

Claimant filed her Preliminary Notice on February 26, 2025. Therein. She represented that the value of her case was less than \$2,500.00. Respondents agreed. This triggered mandatory mediation. The file was transferred to the Legal Advisor Division to conduct the mediation. A mediation conference was scheduled for April 7, 2025, at 10:00 a.m. However, Claimant failed to appear at that conference. For that reason, the file was transferred back to my office to continue with the prehearing process. New prehearing questionnaires were sent out on April 10, 2025. Claimant once again, on April 28, 2025, returned her Preliminary Notice; and while she made no representation concerning the value of her claim in this instance, she agreed to voluntary mediation. But Respondents in their April 24, 2025, response declined to participate in mediation. Claimant's prehearing questionnaire response was due May 1, 2025. However, that deadline came and went without her filing her response. My office emailed her on May 9, 2025, giving her until May 16, 2025, to comply. When she

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failed to file the response by this new deadline, her file was returned to the Commission's general files on May 20, 2025.

On June 18, 2025, Respondents filed the instant Motion to Dismiss. Therein, they asserted that dismissal was called for under § 11-9-702 as well as Rule 13. As was done on the first motion to dismiss, my office wrote Claimant on June 20, 2025, requesting a response within 20 days. This correspondence was sent to an address supplied by Claimant. While she did not claim the certified letter—resulting in its being returned to the Commission on July 14, 2025—the first-class correspondence was not returned. Regardless, she did not respond. On July 15, 2025, a hearing on the motion was scheduled for August 14, 2025, at 11:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to the parties. The United States Postal Service was unable to determine whether Claimant claimed the certified mailing; but the first-class mailing of the notice was not returned.

On August 14, 2025, the hearing on the motion proceeded as scheduled. Claimant failed to appear. Respondents appeared through counsel and argued for dismissal under the foregoing authorities.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. All parties received notice of the Motion to Dismiss and the July 11, 2024, hearing thereon pursuant to 11 C.A.R. § 25-110(d).
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute her claim under 11 C.A.R. § 25-110(d).
4. Respondents' Motion to Dismiss should be, and hereby is, granted.
5. This claim is hereby dismissed *without prejudice*.

III. DISCUSSION

11 C.A.R. § 25-110(d) provides:

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). (Emphasis added)

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 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 August 14, 2025, hearing to argue against its dismissal—since she appeared at the first dismissal hearing on January 30, 2025. Thus, the evidence preponderates that dismissal is warranted under 11 C.A.R. § 25-110(d). Because of this finding, the application of Ark. Code Ann. § 11-9-702 (Repl. 2012) is moot and 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)). Based on the foregoing, I 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*.

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