

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H405524**

CHRISTOPHER L. BYNUM, EMPLOYEE	CLAIMANT
McCORMICK INDUST. ABATEMENT SVCS., EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 15, 2025

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 14, 2025,
in Clinton, Van Buren 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 the Motion to Dismiss by Respondents. A hearing on the motion was conducted on May 14, 2025, in Clinton, 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, pleadings and forms related to this claim, consisting of two 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 eight pages. In accordance with

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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 reflects the following procedural history:

Per the Form AR-C filed on August 26, 2024, Claimant purportedly suffered an injury at work on July 23, 2024, in the form of a heatstroke. According to the Form AR-2 that was also filed on August 6, 2024, Respondents controverted the claim in its entirety.

The record reflects that nothing further took place on the claim until February 26, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 because Claimant has failed to prosecute his claim. The matter was assigned to Administrative Law Judge James D. Kennedy. His office wrote Claimant on February 26, 2025, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Atkins, Arkansas address listed for Claimant in the file and on his Form AR-C. “Amber Bynum” signed for the certified letter on March 1, 2025; and the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On March 18, 2025, a hearing on the Motion to Dismiss was scheduled for May 14, 2025, at 10:30 a.m. at the Van Buren County Quorum Courtroom in Clinton. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, the

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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 for initial benefits 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) Claimant has failed to pursue his claim because he has taken no further action in pursuit of it (including appearing at the May 14, 2025, hearing to argue against its dismissal) since the filing of his Form AR-C on August 26, 2024. 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

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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 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 for initial benefits 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).