

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H300871**

JOHN E. CANNON, EMPLOYEE	CLAIMANT
LITTLE ROCK SCH. DIST., SELF-INSURED EMPLOYER	RESPONDENT
ARK. SCH. BDS. ASSN., THIRD-PARTY ADM'R	RESPONDENT

OPINION FILED AUGUST 1, 2024

Hearing before Administrative Law Judge O. Milton Fine II on August 1, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*.

Respondents represented by Mr. Jarrod S. Parrish, 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 August 1, 2024, in Little Rock, Arkansas. Claimant, who is *pro se*, appeared at the hearing and gave testimony. Admitted into evidence were Commission Exhibit 1 and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of 31 pages and one index page/nine numbered pages thereafter, respectively.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on February 8, 2023, Claimant purportedly suffered an injury to his lower back at work on January 24, 2023, when he slipped and fell on a freshly-mopped bathroom floor. According to the

CANNON – H300871

initial and amended Forms AR-2 that were filed on February 10 and 13, 2023, Respondents accepted the claim and paid indemnity and medical benefits pursuant thereto.

Through then-counsel Gregory R. Giles, Claimant filed a Form AR-C on April 20, 2023. Therein, he alleged that he was entitled to the full range of initial and additional benefits as a result of the alleged lower back injury. Accompanying this filing was a letter from Claimant's counsel to the Commission, requesting that his client be awarded temporary total disability benefits from April 7, 2023, to a date yet to be determined. Respondents responded to this correspondence on April 21, 2023, reiterating that they had accepted the claim and were paying indemnity as well as medical benefits thereon.

The record reflects that nothing further took place on the claim until February 7, 2024. On that date, Respondents filed their first Motion to Dismiss, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) due to Claimant's alleged failure to seek "any type of bona fide hearing before the Workers' Compensation Commission over the last six months." My office wrote Claimant's counsel on February 9, 2024, asking for a response to the motion within 20 days. He responded via letter on February 14, 2024, objecting to dismissal and requesting a hearing. I elected to take the motion under advisement, and issued prehearing questionnaires to the parties on February 16, 2024. However, they informed my office that they were willing to

CANNON – H300871

mediate. For that reason, on February 27, 2024, the file was transferred to the Legal Advisor Division. It was assigned to a legal advisor on February 29, 2024. After Respondents' co-counsel inquired as to the status of the mediation on April 4, 2024, a Notice of Mediation Conference was issued the next day, setting it for April 30, 2024. But on April 17, 2024, Claimant's counsel emailed the legal advisor, indicating that the mediation was no longer needed, and that the file could be returned to the Commission's general files. This was granted.

On April 26, 2024, Giles moved to withdraw from his representation of Claimant. In an order entered on May 14, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

On May 31, 2024, Respondents filed the instant motion, again asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) on the same basis as stated in initial motion. My office wrote Claimant on June 5, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Little Rock address of Claimant listed in the file and on his Form AR-C. Claimant failed to claim the certified letter, and it was returned to the Commission, undelivered, on August 1, 2024; but the first-class letter was not returned to the Commission. Regardless, no response from Claimant to the motion was forthcoming. On June 27, 2024, a hearing on the Motion to Dismiss was scheduled for August 1, 2024, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant via first-class

CANNON – H300871

and certified mail to the same address as before. In this instance, Claimant signed for the certified letter on July 1, 2024; and the first-class letter was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on August 1, 2024. Respondents appeared through counsel and argued for dismissal under the aforementioned authorities. Claimant likewise appeared. He testified that he does not feel that it is “worth it” to continue with his claim, and that he does not object to dismissal of it. In so doing, he stated that he was aware that if it were dismissed without prejudice, he could re-file it, provided that the statute of limitations did not operate as a bar.

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, and having had the opportunity to hear the testimony of Claimant and determine his credibility, 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 additional 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 (a) he has taken no further action

CANNON – H300871

in pursuit of it since the filing of his Form AR-C on April 20, 2023, and (b) he does not intend to pursue it any further. 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.

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 for additional 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). See *supra*.