

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H100341**

DEMETRIUS CHISM, EMPLOYEE

CLAIMANT

**LITTLE ROCK SCH. DIST.,
SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MGMT. RESOURCES,
THIRD-PARTY ADM'R**

RESPONDENT

OPINION FILED MAY 16, 2025

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 15, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant, represented by Gregory R. Giles, Attorney at Law, Texarkana, Arkansas, neither appearing.

Respondents represented by Ms. Melissa Wood, 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 15, 2025, in Little Rock, Arkansas. No testimony was taken in the case. Neither Claimant nor his counsel appeared at the hearing. Admitted into evidence was Respondents' Exhibit 1, pleadings and forms related to this claim, consisting of one index page and 11 numbered pages thereafter. 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 ten 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 reflects the following procedural history:

Per the Form AR-C filed on May 5, 2021, Claimant allegedly suffered multiple injuries at work on December 15, 2021, when he fell through a rotten trailer floor. This claim has been the subject of a mediation, and has been assigned to me on multiple occasions, including on September 30, 2024, to conduct a full hearing. Following a prehearing telephone conference on December 9, 2024, a prehearing order was issued on December 10, 2024, that scheduled a hearing for February 5, 2025. That order listed the following stipulations reached by the parties and issues to have been litigated at the hearing:

Stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer/third-party administrator relationship existed among the parties on December 14, 2020, when Claimant sustained compensable injuries to his bilateral shoulders as well as to his right hip and knee.
3. Respondents accepted the above injuries as compensable and paid medical and indemnity benefits pursuant thereto, including

permanent partial disability benefits pursuant to impairment ratings totaling fifteen percent (15%) to the body as a whole assigned by Dr. Barry Baskin (whom Claimant saw pursuant to a change of physician) with regard to Claimant's bilateral shoulder injuries.

Issues:

1. Whether Claimant's alleged neck and back injuries are barred by the statute of limitations.
2. Whether Claimant sustained compensable injuries to his neck and back in the stipulated work-related specific incident of December 14, 2020.
3. Whether Claimant is entitled to reasonable and necessary medical treatment of his alleged neck and back injuries.
4. When did Claimant reach the end of his healing period?
5. Whether Claimant is entitled to additional temporary total disability benefits.
6. Whether Claimant is entitled to impairment ratings, and permanent partial disability benefits pursuant thereto, in connection with his alleged neck and back injuries.
7. What was Claimant's average weekly wage?
8. Whether Claimant is entitled to wage loss disability benefits.
9. Whether Claimant is entitled to a controverted attorney's fee.

All other issues were reserved.

But on the eve of the hearing, the parties reached a settlement, and the hearing was cancelled. On February 18, 2025, I heard and approved a joint petition for partial settlement pursuant to Ark. Code Ann. § 11-9-805(a)(2) (Supp. 2017).

The record reflects that nothing further took place on the claim until March 18, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim (or rather, that portion of the claim that was not the subject of the joint petition for partial settlement) under AWCC R. 099.13 because Claimant has failed to request a hearing on the claim within the last six months. The claim was reassigned to me on March 19, 2025; and on that same date, my office wrote Claimant and his counsel, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Katy, Texas address listed for Claimant in the file and supplied by him. However, both items of correspondence to him were returned to the Commission, with the certified letter bearing the notation that it was unclaimed, and the first-class item stating that it was not deliverable as addressed. The letter to Claimant's counsel was not returned. Regardless, no response from either individual to the motion was forthcoming. On April 9, 2025, a hearing on the Motion to Dismiss was scheduled for May 15, 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.

In this instance, the certified letter was returned to the Commission, unclaimed, on May 14, 2025, while the first-class letter was not returned. Claimant's counsel emailed my office on April 9, 2025, indicating that he did not plan to attend the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, neither Claimant nor his attorney made an appearance at it. 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 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 he has taken no further action in pursuit of it (including appearing at the May 15, 2025, hearing to argue against its dismissal) since the approval of his joint petition for partial settlement on February 18, 2025. 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 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 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).