

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H307371**

TOMMY COOK, EMPLOYEE

CLAIMANT

**ECONOMY AUTO PARTS, INC.,
EMPLOYER**

RESPONDENT

**PREVISOR INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED MAY 28, 2026

Hearing before Administrative Law Judge O. Milton Fine II on May 28, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant, represented by Mr. Scott Hunter, Jr., Attorney at Law, Jonesboro, Arkansas, neither 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 May 28, 2026, in Little Rock, Arkansas.¹ No testimony was taken. Neither Claimant² nor his counsel appeared at the hearing. Admitted into evidence were Commission's Exhibit 1 and Respondents' Exhibit 1—forms, pleadings, and correspondence related to the claims—consisting of 48 and 19 pages, respectively. See Ark. Code Ann. §

¹Even though this case arose out of Craighead County, the decision was made to hold this hearing in Pulaski County for reasons of judicial economy because Claimant does not object to the dismissal of it. See *infra*.

²At the hearing, Respondents represented to the Commission that Claimant has passed away. But I note that no one purporting to represent Claimant's estate appeared at the hearing, either.

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11-9-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”).

The record shows the following procedural history:

A Form AR-1 filed on November 9, 2023, reflects that Claimant purportedly injured his back at work on September 20, 2023. Per a Form AR-2 that was also filed on November 9, 2023, Respondents controverted the alleged injury. No Form AR-C was ever filed in connection with this.

Claimant’s counsel made his entry of appearance on January 23, 2024. By letter on February 6, 2024, counsel requested a hearing on this matter. The file was assigned to Judge Steven Porch, whose office issued preliminary notices and prehearing questionnaires to the parties on February 23, 2024. Respondents’ counsel entered his appearance on March 1, 2024. The parties filed preliminary notices and prehearing questionnaire responses. Following a prehearing telephone conference on May 7, 2024, Judge Porch scheduled a hearing for July 12, 2024, at the Craighead County Courthouse in Jonesboro on the following issues:

1. Whether Claimant sustained a compensable injury to his back by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment and unpaid medically related travel expenses.
3. Whether Claimant is entitled to temporary total disability benefits.

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4. Whether Claimant gave Respondent Employer notice of [a] work injury.
5. Whether Claimant's attorney is entitled is entitled to controverted attorney's fees.

On June 20, 2024, Respondents moved for a continuance. Judge Porch granted the continuance and returned the file to the Commission's general files.

Claimant renewed his hearing request by letter on December 26, 2024. Judge Porch's office issued new preliminary notices and prehearing questionnaires to the parties on January 3, 2025. Once again, the parties responded. After the February 19, 2025, prehearing telephone conference, Judge Porch issued another prehearing order on February 24, 2025, rescheduling the hearing for June 13, 2025, on the following issues:

1. Whether Claimant sustained a compensable injury to his back by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment including out of pocket expenses.
3. Whether Claimant is entitled to temporary total disability benefits from September 21, 2023, until a date yet to be determined.
4. Whether Claimant provided notice of the injury to his back pursuant to [Ark. Code Ann.] § 11-9-701.

5. Whether Claimant's attorney is entitled to controverted attorney's fees.

However, on May 30, 2025, Claimant's counsel emailed Judge Porch:

We have the Tommy Cook hearing on 6/13/25. I spoke with the Claimant yesterday and he is in the process of getting some additional treatment related to the injury in this matter. His required back surgery was delayed to December because of insurance issues and, at this time, he is still experiencing significant post-fusion pain and worsening of other symptoms. Due to this, we request this matter be returned to general files to allow for additional healing time and the needed treatment to fully identify all the issues to be tried. [Respondents' counsel] has stated he has no objection.

The judge granted the request and returned the file to the Commission's general files.

The record reflects that nothing further took place on this matter until March 19, 2026. On that date, Respondents filed the instant motion, asking for dismissal of this matter because "[C]laimant has not requested a hearing or done anything to pursue this matter for quite some time." The captioned file was assigned to me on March 20, 2026. That same day, my office wrote Claimant and his counsel, asking for a response to the motion within 20 days. The office of Claimant's counsel emailed my office on April 10, 2026, yet again requesting a hearing. Based on this, the Motion to Dismiss was held in abeyance, and preliminary notices and prehearing questionnaires were once again issued to the parties. However, on April 27, 2026, Claimant's counsel contacted my office and

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Respondents' counsel to state that his client no longer wished to pursue this matter. For that reason, the Motion to Dismiss was scheduled as outlined above.

Again, neither Claimant nor his attorney appeared at the hearing on the motion. But Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702.

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 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim for initial benefits is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

III. DISCUSSION

11 C.A.R. § 25-110(d) (formerly 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).

No Form AR-C has been filed in this case. That is the means for filing a “formal claim.” While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C. In *Cook v. Southwestern Bell Telephone Company*, 21 Ark. App. 29, 727 S.W.2d 862 (1987) the Arkansas Court of Appeals discussed the minimum requirements necessary for correspondence to the Commission to constitute a claim for additional compensation for the purpose of tolling the applicable statute of limitations. There, the court held that an

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attorney's correspondence notifying the Commission that he has been employed to assist a claimant in connection with unpaid benefits is sufficient to state a claim for additional compensation where the correspondence also lists the claimant's name, the employer's name and the Commission file number. See also *Garrett v. Sears Roebuck and Company*, 43 Ark. App. 37, 858 S.W.2d 146 (1993). My review of the Commission's file discloses a document sufficient to constitute a claim for initial benefits under *Cook, supra*. That document is Claimant's March 15, 2024, prehearing questionnaire response, which includes the names of the parties along the instant claim number, and his allegations that he suffered a compensability injury to his back on September 20, 2023, and that he is entitled to medical and other benefits pursuant thereto.

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 28, 2026, hearing to argue against its dismissal) since his file was returned to the Commission's general files nearly one year ago—on May 30, 2025—at his request. Moreover, his counsel conveyed to my office that Claimant is no longer interested in pursuing this claim. Consequently, the evidence preponderates that dismissal is warranted under § 25-110(d).

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*.³

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

³“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).