

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H300194**

TAMMY T. CRAIG, EMPLOYEE	CLAIMANT
HINO MOTORS MFG. USA, INC., EMPLOYER	RESPONDENT NO. 1
FIRST LIBERTY INS. CORP., CARRIER	RESPONDENT NO. 1
ARROW WORKFORCE SOLUTIONS, UNINSURED EMPLOYER	RESPONDENT NO. 2

OPINION FILED AUGUST 22, 2024

Hearing before Administrative Law Judge O. Milton Fine II on August 22, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents No. 1 represented by Mr. Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2, represented by Mr. R. Scott Zuerker, Attorney at Law, Fort Smith, Arkansas, not appearing.

I. BACKGROUND

This matter comes before the Arkansas Workers' Compensation Commission (the "Commission") on a Motion to Dismiss by Respondents No. 1. A hearing on the motion was conducted on August 22, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant failed to appear at the hearing; she notified the Commission that she was waiving her appearance see *infra*). Admitted into evidence were Commission Exhibit 1 and Respondents'

CRAIG – H300194

Exhibit 1—forms, pleadings and correspondence related to the claim—consisting of 42 pages and one page, respectively.

The evidentiary record reflects the following procedural history:

Per the Form AR-C filed on January 10, 2023, Claimant allegedly injured herself at work on July 11, 2022, when she slipped and fell while loading the carrier cases machine at Respondent Hino. Counsel for Respondent No. 1 entered his appearance on January 16, 2023. According to the Form AR-2 that was filed on January 24, 2023, Respondents No. 1 controverted the claim on the ground that Claimant was not employed by Respondent Hino. Thereafter, on February 21, 2023, Claimant failed another Form AR-C, this time naming the employer as Canadian Executive Search Group/Arrow Workforce Solutions—Respondent No. 2—which was uninsured for workers' compensation purposes as of the alleged date of injury.

The file was assigned to the Legal Advisor Division of the Commission. However, because attempts to set up a mediation conference had failed (apparently between Claimant and Respondent No. 2), the file was returned to the Clerk of the Commission on May 15, 2023. The file was reassigned to my office on May 16, 2023. Because of the uncertainty surrounding who the named respondents should be, prehearing questionnaires were not issued to the parties until June 14, 2023. When this occurred, they went to Claimant and to

CRAIG – H300194

Respondent No. 2 only. Claimant filed a timely response thereto on June 23, 2023.

When no response by Respondent No. 2 was forthcoming, my office contacted counsel for Respondents No. 1. He explained that his clients were not the proper party to the claim because Claimant was actually working for Respondent No. 2. Counsel for Respondents No. 1 followed up on this by moving for dismissal of his clients from this claim on August 1, 2023. I took no action on the motion. Instead, I notified counsel for Respondents No. 1 that because of a potential dual employment issue in the matter, I was sending them a prehearing questionnaire as well. They filed a timely response thereto on September 7, 2023. On September 20, 2023, I wrote Respondent No. 2, giving them until October 11, 2023, to file a prehearing questionnaire response to avoid being penalized. On October 10, 2023, counsel for Respondent No. 2 made his entry of appearance. The next day, he filed a prehearing questionnaire response by the above deadline.

At the request of all the parties, on October 11, 2023, I asked that the file be reassigned to the Legal Advisor Division to conduct a mediation. The mediation eventually took place on July 9, 2024. Unfortunately, the matter was not resolved as a result of that mediation. The next day, the Legal Advisor Division asked that the file be reassigned back to my office. This occurred on July 11, 2024.

CRAIG – H300194

On July 10, 2024, counsel for Respondents No. 1 filed what was termed a “Renewed Motion to Dismiss.” Therein, he alleged that Claimant agreed with his clients that there was no employment relationship between her and Respondent Hino Motors. On July 16, 2024, my office wrote Claimant, requesting a response to the motion within 20 days. The letter was sent to her by certified and first-class mail at the address for her listed in the file and on her Forms AR-C. Claimant signed for the certified letter on July 22, 2024; and the first-class letter was not returned. Claimant telephoned my office to state that she had no objection to Respondents No. 1 being dismissed from the claim; and she restated this in an email on August 13, 2024.

The next day, Claimant emailed my office to state that she was waiving her appearance at the hearing on the Motion to Dismiss. Because of this waiver, I issued a Notice of Hearing on August 14, 2024, which scheduled a hearing on the Motion to Dismiss for August 22, 2024, at 9:30 a.m. at the Commission in Little Rock. This was sent to Claimant not only by first-class and certified mail, but was emailed to her as well. To date, the notice has not been returned.

The hearing on the motion proceeded as scheduled on August 22, 2024. Again, Claimant did not appear. Counsel for Respondent No. 2 waived his appearance as well. But Respondents No. 1 appeared through counsel and argued for dismissal under, inter alia, AWCC R. 099.13.

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 claim.
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 this claim against Respondents No. 1 under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; the claim—i.e., the January 10, 2023, Form AR-C—is hereby dismissed *without prejudice* against Respondents No. 1 under AWCC R. 099.13.
5. The February 21, 2023, Form AR-C, which names Respondent No. 2 as the respondent employer, remains in full force and effect.

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.

CRAIG – H300194

See generally *Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

As the moving party, Respondents No. 1 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 the claim (*i.e.*, the January 10, 2023, Form AR-C) because she has taken no further action in pursuit of it—including appearing at the August 22, 2024, hearing on the Motion to Dismiss—since its reassignment to me after the unsuccessful mediation. Moreover, she has clearly indicated that she has no intention of pursuing it further by (1) communicating that she did not object to dismissal of it, and (2) waiving her opportunity to appear at the hearing on the Motion to Dismiss in order to oppose it. Thus, the evidence preponderates that dismissal of this particular claim and Respondents No. 1 is warranted under Rule 13.

That leaves the question of whether the dismissal should be with or without prejudice. The Commission possesses the authority to dismiss claims with

CRAIG – H300194

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 No. 1 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*.

The February 21, 2023, Form AR-C, on the other hand—which names Respondent No. 2 as the respondent employer—remains in full force and effect.

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim—to-wit, the January 10, 2023, Form AR-C—is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge