

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H303175**

HARLAN GRONING, EMPLOYEE

CLAIMANT

**WILLIAMS FARMS GP,
EMPLOYER**

RESPONDENT

**TECHNOLOGY INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED APRIL 8, 2025

Hearing before Administrative Law Judge O. Milton Fine II on April 4, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. William C. Frye, Attorney at Law, North 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 April 4, 2025, in Jonesboro, 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, correspondence and forms related to this claim, consisting of 11 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 25

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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 First Report of Injury or Illness filed on May 16, 2023, Claimant purportedly suffered an injury to multiple body parts at work on January 26, 2023, when he was involved in a rollover truck accident. According to the Form AR-2 that was filed on May 17, 2023, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto. Respondents' counsel entered his appearance before the Commission on May 19, 2023.

On January 8, 2024, through then-counsel Laura Beth York, Claimant filed a Form AR-C. Therein, he alleged that he was entitled to the entire range of initial and additional benefits as a result of his alleged left leg, left thigh, head, left-side ribs, back, and "other whole body" injuries. No hearing request accompanied this filing. Respondents' counsel on January 23, 2024, reiterated his clients' position that they had accepted the claim as compensable and had been paying benefits. On June 15, 2023, Respondents requested a subpoena duces tecum from the Commission. This was issued on June 20, 2023.

On December 9, 2024, York moved to withdraw from her representation of Claimant. Accompanying this motion were copies of numerous letters her office had sent Claimant, attempting to make contact with him. These attempts were

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unsuccessful. In an Order entered on December 20, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until December 27, 2024. On that date, Respondents filed the instant motion, asking for dismissal of it under AWCC R. 099.13. My office wrote Claimant on December 31, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the two Reyno, Arkansas addresses of Claimant (one a street address, the other a post office box number) listed in the file and on his Form AR-C. Claimant signed for the certified letters on January 7, 2025, and the first-class letters were not returned. Regardless, no response from Claimant to the motion was forthcoming. On January 31, 2025, a hearing on the Motion to Dismiss was scheduled for April 4, 2025, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant via first-class and certified mail to the same addresses as before. In this instance, the certified letters were claimed by “Donnie Yandell”; and as was the case previously, the first-class letters were not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on April 4, 2025. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under Rule 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 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 claims—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 April 4, 2025, hearing to argue against its dismissal) since the filing of his Form AR-C on January 8, 2024. Thus, the evidence preponderates that dismissal of the claim 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. I agree and

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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).