

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H305258**

**PAUL HICKS,
EMPLOYEE**

CLAIMANT

**D B G ARKANSAS, LLC,
EMPLOYER**

RESPONDENT

**RETAILERS CASUALTY INS.,
CARRIER**

RESPONDENT

**SUMMIT CONSULTING, INC.,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED MAY 22, 2024

Hearing conducted on Tuesday, May 13, 2025, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant was represented by Mr. Daniel E. Wren, Attorney at Law, Little Rock, Arkansas.

The Respondents were represented by Mr. Michael Stiles, Attorney at Law, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission originally for a full hearing on May 13, 2025. However, the Claimant did not want to go forward with the prosecution of this claim. Respondents made an oral Motion to renew their Motion to Dismiss due to a lack of prosecution. I granted that motion in the presence of the Claimant and his legal counsel. Thus, I converted the full hearing into a Motion to Dismiss hearing. There was no evidence admitted into the record. Nevertheless, I have blue-backed Forms AR-1, AR-2, and Respondents Motion to Dismiss, *as discussed infra*.

The record reflects on August 17, 2023, a Form AR-1 was filed with the Commission purporting that Claimant was moving and flipping a dye press that was between 600-800 pounds when he injured his neck and back. Also on that same date, a Form AR-2 was filed by Respondents

neither accepting nor denying compensability. Eventually, the Respondents accepted the claim and have paid benefits. The parties had a prehearing conference on March 12, 2025, wanting to litigate issues involving an entitlement to an impairment rating for his spine, permanent partial disability, wage loss, and a controverted attorney's fee. A prehearing order was filed the same day setting a full hearing date for May 13, 2025.

Claimant filed a Motion to Dismiss on May 12, 2025, at 4:29pm. I required both parties to appear on May 13, 2025, to discuss the motion on the full hearing date. Both parties appeared and the Claimant did not desire to proceed. I did not agree to a dismissal of the full hearing. Both attorneys had a discussion with each other and Respondent renewed their Motion to Dismiss filed January 29, 2025. I granted Respondents' motion, thereby changing the full hearing into a Motion to Dismiss hearing. The Respondents made their oral argument in favor of their motion. The Claimant offered no rebuttal other than agreement with the motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the May 13, 2025, hearing.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' oral Motion to Dismiss should be granted.
5. This claim is hereby dismissed without prejudice.

DISCUSSION

AWCC 099.13 provides:

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).

Consistent with AWCC Rule 099.13, the Commission scheduled and conducted a hearing, with reasonable notice. Both parties were present at the hearing. Thus, I find by the preponderance of the evidence that reasonable notice was given to the Claimant.

AWCC Rule 099.13 allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. The Claimant was present at the full hearing and did not want to go forward with the full hearing. The Claimant did not object to Respondents' Motion to Dismiss, rather he agreed with the motion. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute his claim. Thus, Respondents' Motion to Dismiss should be granted.

That leaves the question of whether the dismissal of the claim should be with or without prejudice. Both parties agreed to a dismissal without prejudice. However, 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). Despite that, in numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals without prejudice. *See Professional Adjustment Bureau v. Strong*, 275 Ark. 249, 629 S.W.2d 284 (1982).

Based on the above authorities, I find that the dismissal of this claim should be and hereby is entered without prejudice.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is granted, *without prejudice*.

IT IS SO ORDERED.

Steven Porch
Administrative Law Judge