

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H404905**

BETTY HORTON, EMPLOYEE	CLAIMANT
PENSKE TRUCK LEASING LP, EMPLOYER	RESPONDENT
OLD REPUBLIC INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 8, 2025

Hearing before Administrative Law Judge O. Milton Fine II on May 7, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not 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 7, 2025, in Little Rock, 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, forms, pleadings, reports, and correspondence related to this claim, consisting of one index page and nine 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

HORTON – H404905

Commission's file on the claim, consisting of 12 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 shows the following procedural history:

On July 31, 2024, through then-counsel Laura Beth York, Claimant filed a Form AR-C, requesting the full range of initial and additional benefits in connection with an injury to her right shoulder “and other whole body” that she allegedly suffered at work on June 24, 2024. No hearing request accompanied this filing. On October 7, 2024, Respondents filed a Form AR-2, stating that they were “[a]ccepting [a] one time visit.” They amended this filing on December 5, 2024, stating that “[t]his is the same body part as other open claim.¹ This claim is being closed and will treat on prior claim.” On October 17, 2024, York moved to withdraw from her representation of Claimant. In an order entered on October 30, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until February 4, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim² under AWCC R. 099.13 because “Claimant has not sought

¹See *infra* note 2.

²Respondents in their motion reference two Forms AR-C being filed in this matter: one on August 11, 2023, and the other on July 10, 2024. The file does not contain this purported earlier Form AR-C; but I note that its filing would pre-date the alleged injury date, June 24, 2024. The motion explains this anomaly:

HORTON – H404905

any type of bona fide hearing before the Workers' Compensation Commission.” The file was assigned to Administrative Law Judge JayO. Howe. His office wrote Claimant on February 10, 2025, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the White Hall, Arkansas address for her listed in the file and on her Form AR-C. Someone with an illegible signature signed for the certified letter on February 14, 2025; and the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On March 13, 2025, a hearing on the Motion to Dismiss was scheduled for May 7, 2025, at 1:30 p.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, Claimant claimed the certified letter on March 18, 2025; and the first-class letter was, again, not returned.

The hearing on the Motion to Dismiss proceeded as scheduled before the undersigned. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the foregoing authority.

This claim involves an injury which occurred on or about July 30, 2022. Respondents will stipulate that an Employer-Employee relationship existed on that date and that Claimant sustained a compensable injury to her right shoulder and left knee.

I take judicial notice that the above allegations were the subject of another claim, AWCC No. H207279. That claim was dismissed on Respondents' motion by Administrative Law Judge Steven Porch on March 31, 2025.

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 this 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 her claim because she has taken no further action in pursuit of it (including appearing at the May 7, 2025, hearing to argue against its dismissal) since the filing of her Form AR-C on July 31, 2024. 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. I agree and

HORTON – H404905

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).