

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H402043**

SHARON D. JONES, EMPLOYEE	CLAIMANT
CRESTPARK WYNNE LLC, SELF-INSURED EMPLOYER	RESPONDENT
CANNON COCHRAN MGMT. SVCS., INC., THIRD-PARTY ADM'R	RESPONDENT

OPINION FILED JANUARY 24, 2025

Hearing before Administrative Law Judge O. Milton Fine II on January 24, 2025, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Carol Lockard Worley, Worley, Wood & Parrish, Attorneys 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 January 24, 2025, in Forrest City, 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 were Commission Exhibit 1 (see 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 Respondents’ Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 19 and 26 pages, respectively.

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The record shows the following procedural history:

Per the First Report of Injury or Illness filed on April 2, 2024, Claimant purportedly suffered injuries at work on July 23, 2023, when she slipped and fell. According to the Form AR-2 that was also filed on April 2, 2024, Respondents accepted the claim as a medical-only one.

On March 25, 2024, Claimant filed a Form AR-C. Therein, she alleged the following: “The cause of injury is due to slip and fall. My back, legs and tailbone hurts [sic] every day. I also broke my tooth from the fall.” Claimant did not check any box on the form to denote what type(s) of benefit(s) she was seeking.

The record reflects that nothing further took place on the claim until October 17, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) because Claimant had not sought a hearing on her claim in the preceding six months. My office wrote Claimant on October 22, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Parkin, Arkansas address for Claimant (a Post Office box) that was listed in the file and on her Form AR-C. On October 28, 2024, she telephoned my office and informed my assistant that she wanted a hearing on her claim. Based on this, I informed the parties by email that same day that I was taking the motion under advisement and would be proceeding to a hearing on the merits of the claim. Prehearing questionnaires were issued to the parties on

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October 28, 2024. Claimant was informed that her Preliminary Notice and Prehearing Questionnaire responses were due on November 12 and 17, 2024, respectively. These documents were not only mailed to Claimant at the aforementioned address in Parkin, but were emailed to her as well. When these deadlines were missed, my office attempted without success to contact her by email. However, because of Claimant's failure to file her prehearing documents, a hearing on the Motion to Dismiss was set for January 10, 2024, at 10:30 a.m. at the St. Francis County Courthouse in Forrest City. This notice was sent to Claimant by first-class and certified mail to the same Parkin address. She signed for the certified mailing on December 4, 2024, and the first-class version was not returned. But because inclement winter weather necessitated the cancellation of that hearing, on January 6, 2025, it was re-set for January 24, 2025, at the same time and location. Claimant signed for this certified letter on January 18, 2024; and the notice that was sent by first-class mail to her was not returned.

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

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

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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 her claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this claim 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

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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 January 24, 2025, hearing to argue against its dismissal) since the filing of her Form AR-C on March 25, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the argument made under § 11-9-702 will not be addressed.

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 with prejudice. But based on the foregoing, I find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

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).

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IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge