

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H504493**

YOWIN MEJIA, EMPLOYEE

CLAIMANT

**MICHAEL PHILLIPS,
EMPLOYER**

RESPONDENT

**TECHNOLOGY INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED MARCH 17, 2026

Hearing before Administrative Law Judge O. Milton Fine II on March 17, 2026, in Little Rock, Pulaski 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 March 17, 2026, 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 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”), forms, pleadings, and correspondence related to this claim, consisting of 13 pages.

The record shows the following procedural history:

Per the First Report of Injury or Illness filed on August 4, 2025, Claimant purportedly suffered injuries to his wrist and right knee on June 2, 2025, when he fell off the roof of a carport and landed face-down on the concrete. According to the Form AR-2 that was also filed on August 4, 2025, Respondents controverted the claim in its entirety. Two days later, through counsel, Respondents denied that Claimant was an employee of the alleged employer.

On July 21, 2025, Claimant filed a Form AR-C, requesting initial benefits in the form of medical and temporary total disability benefits. Therein, he claimed that he fractured both wrists and his right knee in the alleged fall. No hearing request accompanied this filing. Later, in an undated handwritten note on correspondence sent to him by the Commission, Claimant also claimed a dental injury.

The record reflects that nothing further took place on the claim until January 22, 2026. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)). Therein, they argued that Claimant has taken no measures to pursue his claim, including requesting a hearing thereon, since the filing of the Form AR-C. The file was assigned to Administrative Law Judge James Kennedy on January 23, 2026; and on that same date, his office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail

to the Conway, Arkansas address for him listed in the file and on his Form AR-C. But both items of correspondence were returned to the Commission. Unsurprisingly, no response from Claimant to the motion was forthcoming. On February 13, 2026, a hearing on the Motion to Dismiss was scheduled for March 17, 2025, at 10:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address as before. Once again, both items were returned to the Commission.

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 above 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 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 11 C.A.R. § 25-110(d).

4. The Motion to Dismiss is hereby granted; this claim is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

III. DISCUSSION

11 C.A.R. § 25-110(d) 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 his claim because he has taken no further action in pursuit of it (including appearing at the March 17, 2026, hearing to argue against its dismissal) since the filing of his Form AR-C on July 21, 2025. Thus, the evidence preponderates that dismissal is warranted under the above provision.

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 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 initial 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).