

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H405016**

**JACOB MUPENE, EMPLOYEE**

**CLAIMANT**

**SHEARERS FOODS LLC,  
EMPLOYER**

**RESPONDENT**

**FARMINGTON CASUALTY CO.,  
CARRIER**

**RESPONDENT**

**OPINION FILED MAY 6, 2025**

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 2, 2025,  
in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, 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 2, 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 43 numbered 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 41

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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 August 6, 2024, Claimant purportedly suffered an injury to his feet on July 13, 2024, from excessive standing. According to the Form AR-2 that was also filed on August 6, 2024, Respondents controverted the claim in its entirety. Respondents' counsel entered his appearance before the Commission on May 19, 2023.

On August 14, 2024, the Commission received a letter from Claimant that referenced the instant claim and stated pertinent part: "I am writing this letter to request a review and overturn[ing] of the decision that was made regarding my claim. With all due respect, I have reason to believe my claim was wrongfully denied." He later referred to this correspondence as an "appeal" of Respondents' denial and requested benefits in the forms of, inter alia, medical treatment of his alleged injuries, which he represented included his back. Claimant responded to a questionnaire sent to him by the Commission's Legal Advisor Division. Therein, he represented that while the amount in dispute in his claim was in excess of \$2,500.00, he nonetheless wanted to attempt mediation. In another letter received by the Commission on August 23, 2024, Claimant made a "settlement demand" of Respondents.

Because the attempt to set up a legal advisor or mediation conference failed, the file was reassigned to me on August 29, 2024. Respondents' counsel entered his appearance on September 9, 2024. Preliminary notices and prehearing questionnaires were issued to the parties on September 9, 2024. Respondents filed timely responses thereto—on September 17, 2024, and October 8, 2024, respectively. But due to Claimant's failure to file responses, his file was returned to the Commission's general files on November 5, 2024.

The record reflects that nothing further took place on the claim until February 6, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 because Claimant (1) had not filed a prehearing questionnaire response, and (2) had not responded to discovery that had been propounded to him in September 2024. My office wrote Claimant on February 12, 2025, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Bradford, Arkansas post office box that Claimant had used on all his correspondence with the Commission. While the certified letter was returned to the Commission, unclaimed, on March 14, 2025, the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. Also on March 14, 2025, a hearing on the Motion to Dismiss was scheduled for May 2, 2025, at 11:30 a.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant via first-class and certified mail to the same address as before. Once again, the

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certified letter was returned to the Commission, unclaimed, on March 28, 2025, while the first-class letter 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 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 initial 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).

No Form AR-C has been filed in this case. That is the means for filing a “formal claim.” While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C. In *Cook v. Southwestern Bell Telephone Company*, 21 Ark. App. 29, 727 S.W.2d 862 (1987) the Arkansas Court of Appeals discussed the minimum requirements necessary for correspondence to the Commission to constitute a claim for additional compensation for the purpose of tolling the applicable Statute of Limitations. There, the court held that an

attorney's correspondence notifying the Commission that he has been employed to assist a claimant in connection with unpaid benefits is sufficient to state a claim for additional compensation where the correspondence also lists the claimant's name, the employer's name and the Commission file number. *See also Garrett v. Sears Roebuck and Company*, 43 Ark. App. 37, 858 S.W.2d 146 (1993). My review of the Commission's file discloses a document sufficient to constitute a claim for initial benefits under *Cook, supra*. That document is Claimant's August 14, 2024, correspondence—discussed above.

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 May 2, 2025, hearing to argue against its dismissal) since August 23, 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. Based on

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the foregoing, I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.<sup>1</sup>

#### **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.**

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O. MILTON FINE II  
Chief Administrative Law Judge

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<sup>1</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).