

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H305440**

<b>JORGE A. PUENTE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>THOMPSON CONSTR. GRP., INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMER. CASUALTY CO. OF READING, PA, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 16, 2024**

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 16, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jacob Sutter, Attorney at Law, North Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing on the motion was conducted on August 16, 2024, 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 without objection was Commission Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 14 pages.

The record reveals the following procedural history:

The First Report of Injury or Illness, filed on August 23, 2023, reflects that Claimant purportedly suffered an injury to his face at work on August 4, 2023,

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when he suffered a coughing fit that caused him to faint and fall. Per the Form AR-2 that was filed on August 28, 2023, Respondents denied the claim, asserting that the alleged injury did not occur in the course and scope of Claimant's employment.

On August 29, 2023, Claimant filed a Form AR-C, alleging that his alleged facial injury happened after he "blacked out," and requesting medical and temporary total disability benefits along with rehabilitation. No hearing request accompanied this filing. Respondents' counsel entered his appearance on September 13, 2023; and on September 22, 2023, he requested a copy of the claim file from the Commission. In a letter to the Commission dated October 31, 2023, Respondents reiterated that their position on compensability had not changed.

The record reflects that no further activity took place on this claim until March 27, 2024, when Respondents filed the instant Motion to Dismiss under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012), contending that no hearing request had been made in over six months. The file was assigned to me by the Clerk of the Commission on March 27, 2024; and that same day, my office wrote Claimant, requesting a response to the motion within 20 days. This correspondence was sent by both certified and first-class mail to the Pharr, Texas address for Claimant listed in the file and on his Form AR-C. The certified letter was claimed by Claimant on April 1, 2024; and the first-class correspondence was

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not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

On May 6, 2024, a hearing on Respondents' motion was scheduled for August 16, 2024, at 12:00 p.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, the certified letter was returned to the Commission, unclaimed, on June 4, 2024. But as before, the one sent via first class was not returned.

The hearing proceeded as scheduled on August 16, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the provisions cited above.

## **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 claim.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Claimant has failed to prosecute this claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.

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5. The claim is hereby dismissed *without prejudice*.

### 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).

The evidence adduced at the hearing shows that Claimant has taken no action in pursuit of his claim since the filing of his Form AR-C on August 29, 2023. Moreover, he failed to appear at the hearing to argue against dismissal of the claim, despite the evidence showing that both he and Respondents were provided reasonable notice of the Motion to Dismiss and of the hearing thereon. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702.

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)). Based on

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

**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.**

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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).