

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NOS. H301032 & H303323**

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| DEWAYNE WALLS, EMPLOYEE | CLAIMANT |
| MARMADUKE SCH. DIST., SELF-INSURED EMPLOYER | RESPONDENT |
| ARK. SCH. BDS. ASSN. THIRD-PARTY ADM'R | RESPONDENT |

OPINION FILED OCTOBER 7, 2024

Hearing before Administrative Law Judge O. Milton Fine II on October 4, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jarrod S. Parrish, 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 October 4, 2024, 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 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, reports, and correspondence related to this claim, consisting of 27 and 16 pages, respectively.

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The record reflects the following procedural history:

H301032. Per the First Report of Injury or Illness filed on February 15, 2023, Claimant purportedly suffered an injury to his left foot at work on January 27, 2023, when he was retrieving supplies from a storage room. According to the Form AR-2 that was also filed on February 15, 2023, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

On May 23, 2023, through then-counsel Scott Hunter, Jr., Claimant filed a Form AR-C, requesting the full range of additional benefits in connection with an injuries to his left foot that he allegedly suffered at work on January 26, 2023. No hearing request accompanied this filing. In a letter to the Commission dated May 24, 2023, Respondents reiterated that they accepted the claim and have paid “all reasonable, necessary and authorized medical expenses and indemnity benefits” in connection with it.

H303323. Per the First Report of Injury or Illness filed on May 4, 2023, Claimant purportedly suffered an injury to his left shoulder at work on January 10, 2023, when he reached for a door that was about to strike a student. According to the Form AR-2 that was filed on May 24, 2023, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On May 23, 2023, through then-counsel Hunter, Claimant filed a Form AR-C. Therein, he alleged that he was entitled to the full range of additional benefits. As before, no hearing request accompanied this filing. Respondents advised the

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Commission by letter on May 24, 2023, that they “have accepted this claim as compensable, and all reasonable, necessary and authorized medical expenses and indemnity benefits have been paid.”

The record reflects that nothing further took place on either claim until May 1, 2024. On that date, Respondents filed the instant motion, asking for dismissal of both claims under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). My office wrote Claimant and his counsel on May 2, 2024, asking for a response to the motion within 20 days. The letter to Claimant was sent by first class and certified mail to the Marmaduke address for him listed in the files and on his Forms AR-C. In response to this, Hunter wrote the Commission on May 16, 2024, requesting a hearing on both claims. Based on this request, I took the Motion to Dismiss under advisement and issued preliminary notices and prehearing questionnaires to the parties on May 17, 2024. Claimant filed his preliminary notice on June 3, 2024—two days late; Respondents’ notice, filed on May 20, 2024, was timely.

On June 13, 2024, Hunter’s office emailed me to state that they “have found that this matter no longer requires a hearing and request that this file [sic] be returned to general files to allow the parties to evaluate the possibility of the resolution of the claim [sic] as a whole.” Respondent’s co-counsel added the following: “Respondents have no objection to this. If we can’t get it resolved I will

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request it be reassigned to your honor to address our MTD [Motion to Dismiss].”

Based on this, I returned the files to the Commission’s general files.

On June 21, 2024, Hunter moved to withdraw from his representation of Claimant in both claims. In an Order entered on July 10, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

On July 19, 2024, Respondents’ co-counsel wrote the Clerk of the Commission, asking that the above-captioned files be reassigned to me for the purpose of adjudicating the Motion to Dismiss. The file was reassigned to me on July 22, 2024; and on July 23, 2024, I wrote Claimant, requesting a response to the motion within 20 days. This letter was sent via first-class and certified mail to the same address that was used before. In this instance, Claimant signed for the certified mailing on July 26, 2024; and the first-class letter was not returned. However, no response from him was forthcoming.

On August 28, 2024, a hearing on the Motion to Dismiss was scheduled for October 4, 2024, at 1:00 p.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. The certified letter was claimed by Claimant on August 30, 2024; and as was the case previously, the first-class letter was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on October 4, 2024. Again, Claimant failed to appear at the hearing. But Respondents

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appeared through counsel and argued for dismissal under the aforementioned 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 two claims under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; these two claims for additional benefits are 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.

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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 claims—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 two claims because he has taken no further action in pursuit of them (including appearing at the October 4, 2024, hearing to argue against their dismissal) since the prehearing process on them was cancelled at his request, and the files were returned to the Commission's general files, on June 14, 2023. Thus, the evidence preponderates that dismissal of both is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9-702(d) (Repl. 2012).

That leaves the question of whether the dismissal of the claims 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

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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 these claims 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, these two claims for additional benefits are 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).