

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H400134**

BENJAMIN J. WILLIS, EMPLOYEE	CLAIMANT
LITTLE ROCK HAULING, EMPLOYER	RESPONDENT
INDEMNITY INS. CO. OF NO. AMER., CARRIER	RESPONDENT

OPINION FILED OCTOBER 3, 2024

Hearing before Administrative Law Judge O. Milton Fine II on October 3, 2024, in Little Rock, Pulaski 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 3, 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 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 thirteen (13) and nine (9) pages, respectively.

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The record shows the following procedural history:

On January 5, 2024, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C, requesting the full range of initial benefits in connection with injuries to his neck, back, and right shoulder that he allegedly suffered at work on July 10, 2023, when he was riding as a passenger in a work truck. . No hearing request accompanied this filing. Respondents' counsel entered her appearance on January 18, 2024, and confirmed that the claim was being controverted in its entirety.

On March 6, 2024, Peoples moved to withdraw from his representation of Claimant. In an Order entered on April 10, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until July 5, 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(a)(4) (Repl. 2012) because "Claimant has not sought any type of bona fide hearing before the Workers' Compensation Commission over the last six months." My office wrote Claimant on July 10, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Jacksonville, Arkansas address for him listed in the file and on the Form AR-C. Claimant signed for the certified letter on July 19, 2024; and the first-class letter was not returned. Regardless, no response from him to the motion was forthcoming. On August 6,

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2024, a hearing on the Motion to Dismiss was scheduled for October 3, 2024, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, “Yolanda Willis” claimed the certified letter on August 8, 2024; and the first-class letter was, again, 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).

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 October 3, 2024, hearing to argue against its dismissal) since the filing of his Form AR-C on January 5, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the argument made under § 11-9-702(a)(4) 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 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 additional 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).