

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H104220**

CLAUDIA BALDRIDGE, EMPLOYEE	CLAIMANT
SPRING RIVER LP GAS, INC., EMPLOYER	RESPONDENT
WELLFLEET NY INS. CO., CARRIER	RESPONDENT

OPINION FILED JULY 25, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 21, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on July 21, 2023, in Jonesboro, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Mr. Randy P. Murphy, Attorney at Law, of Little Rock, Arkansas. The record consists of the Commission's file, which—without objection—has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on May 14, 2021, Claimant purportedly injured her right knee at work on December 24, 2020, while getting out of her office chair. According to the Form AR-2 that was filed on May 17, 2021, Respondents accepted the injury as compensable

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and paid medical and indemnity benefits pursuant thereto. Claimant's then-counsel, Laura Beth York, entered her appearance before the Commission on the matter on July 28, 2021, and requested a hearing on the matter. Accompanying this correspondence was a prehearing questionnaire response. The file was assigned to me on July 29, 2021; and that same day, my office sent a prehearing questionnaire to Respondents. Through their counsel, they filed a timely response thereto on August 23, 2021.

A prehearing telephone conference was scheduled for September 21, 2021. At that conference, the parties agreed to another one that was set for October 18, 2021. Thereafter, on September 23, 2021, Claimant filed a Form AR-C, asking for initial and additional benefits. Claimant alleged therein that she injured not only her right knee, but also her "other whole body." Following the second prehearing telephone conference, a hearing was scheduled for November 19, 2021, on the following issues:

1. Whether Claimant is entitled to additional medical treatment.
2. Whether Claimant is entitled to temporary total disability benefits.
3. Whether Claimant is entitled to a controverted attorney's fee.

Claimant filed a copy of their medical exhibit with the Commission on November 8, 2021. That same day, however, the parties agreed to a continuance of the hearing to December 17, 2021. On December 15, 2021, York advised the Commission by email that because "Respondents have agreed to pay for the recommended surgery," she was withdrawing her client's hearing request.

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Based on this, the hearing was cancelled, and the file was returned to the Commission's general files on December 15, 2021. Even though the first Form AR-C was never dismissed, Claimant's counsel filed it again on November 28, 2022. A handwritten notation at the top of the form indicated that this action was being taken for "[s]tatute [p]urposes."

The record reflects that no further activity occurred in this matter until February 28, 2023. On that date, Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal was warranted under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) because of Claimant's "lack of prosecution" of this claim. On March 27, 2023, I sent a letter to Claimant and her counsel, requesting a response to the motion within 20 days. The letter to Claimant was sent by both first-class and certified mail to the address for her listed in her Forms AR-C. She signed for the certified letter on April 5, 2023; and the first-class letter was not returned. No response to the Motion to Dismiss was forthcoming from either Claimant or her attorney, however.

In the meantime, on April 20, 2023, York filed a motion to withdraw from the case. This motion was inadvertently assigned to the Full Commission instead of the undersigned; and on May 2, 2023, the Full Commission granted it under AWCC Advisory 2003-2.

On May 9, 2023, a hearing on the Motion to Dismiss was scheduled for July 21, 2023, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant by first-class and certified mail at the address

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listed on her Forms AR-C. The certified letter was claimed by her on May 23, 2021; and the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled on July 21, 2023. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authorities.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, I hereby make the following Findings of Fact and Conclusions of Law 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. The evidence preponderates that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; the claim is hereby dismissed without prejudice under AWCC R. 099.13.

III. DISCUSSION

AWCC 099.13 provides:

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). (Emphasis added) Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” 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 her claim because she has taken no further action in pursuit of it (including appearing at the July 21, 2023, hearing to argue against its dismissal) since the re-filing of her Form AR-C on November 28, 2022. Thus, the evidence preponderates that dismissal is warranted under Rule 099.13. The Motion to Dismiss is hereby granted. Because of this finding, the application of Ark. Code Ann. § 11-9-702 (Repl. 2012) is moot and 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

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claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. But based on the above authorities, I agree and find that the dismissal of the claim should be and hereby is entered *without prejudice*.¹

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim² 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).

²The term “claim” encompasses both active, identical, Forms AR-C, filed on September 23, 2021, and on November 28, 2022. With this dismissal, no active Forms AR-C remain.