

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H504384**

JULANDA ALLEN, EMPLOYEE

CLAIMANT

**HEART TO HEART, INC.,
EMPLOYER**

RESPONDENT

**WELLFLEET NY INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED FEBRUARY 5, 2026

Hearing before Administrative Law Judge O. Milton Fine II on February 5, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Phillip J. Wells, Attorney at Law, Jonesboro, Arkansas (neither appearing).

Respondents represented by Mr. Melissa Wood, 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 February 5, 2026, in Little Rock, Arkansas. No testimony was taken in the case. Claimant failed to appear at the hearing; and her counsel waived his appearance. Admitted into evidence were Commission Exhibit 1 and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of 22 and 9 pages, respectively. 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").

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The record reflects the following procedural history:

On July 15, 2025, through counsel, Claimant filed a Form AR-C. Therein, she alleged that she injured her back at work on November 17, 2023, while working as a certified nursing assistant. The boxes on the form were checked to indicate that Claimant was seeking all manner of additional benefits. In a letter accompanying this filing and dated June 30, 2025, Counsel stated that “[t]he claim has been accepted as compensable and [Claimant] is currently receiving appropriate temporary total disability benefits.” However, on July 16, 2025, counsel wrote the Commission:

[Claimant] has been receiving temporary disability checks that are no longer being paid. Please allow this letter to represent a request for a hearing [o]n her entitlement to continue[d] temporary total disability benefits.

The file was assigned to me on July 17, 2025; and on July 18, 2025, my office sent prehearing notices and questionnaires to the parties. Claimant through counsel filed a timely preliminary notice on July 18, 2025. But on July 29, 2025, he again wrote the Commission:

[Claimant] indicated that she was not receiving her temporary disability checks. I received a log of payments from the worker[s]’ comp. carrier as well as a confirmation from [Claimant] that she is getting her temporary disability payments. Please allow this letter to represent a request that the hearing be canceled and that her case return to general files.

This request was granted. On July 30, 2025, my office informed the parties by email that the file was being returned to the Commission’s general files. The prehearing process ceased.

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The record reflects that nothing further took place on the claim until November 25, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702 (Repl. 2012) due to Claimant's alleged failure to, inter alia, make a bona fide hearing request within the previous six months. The file was reassigned to me on January 15, 2026; and on that same date, my office wrote Claimant and her counsel, asking for a response to the motion within 20 days. Claimant's counsel filed a response to the motion on January 19, 2026. The response reads in pertinent part:

[Claimant] is continuing to receive temporary total disability benefits and has not reached maximum medical improvement. Since the matter is not subject to controversion, no hearing has been requested . . . [c]laimant does not object to an Order being entered dismissing the claim without prejudice at this stage of the proceedings.

In an email to my office on January 21, 2026, Claimant's counsel stated: "We are not objecting to an order of dismissal without prejudice. I therefore assume we are not needed to appear. Is that correct?" My office replied in the affirmative. The above statement by counsel was interpreted as his and Claimant's waiver of their appearances at the hearing.

On January 21, 2026, a hearing on the Motion to Dismiss was scheduled for February 5, 2026, at 12:30 p.m. at the Commission in Little Rock. The Notice of Hearing was sent not only to Claimant's counsel, but to Claimant herself via first-class and certified mail to the address for her in Hughes, Arkansas, listed on her Form AR-C.

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The certified letter was claimed on January 29, 2026, by someone with an illegible signature; and the one sent by first-class mail was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on February 5, 2026. Again, Claimant and her counsel failed to appear at the hearing. But Respondents 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 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 her claim under 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

III. DISCUSSION

11 C.A.R. § 25-110(d) reads:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be

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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 her claim because she has taken no further action in pursuit of it since her file was returned to the Commission's general files on July 30, 2025. Thus, the evidence preponderates that dismissal is warranted under § 25-110(d). 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 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

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without prejudice; and Claimant (through counsel) indicated that his client did not object to this. 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 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).