

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G906067

RYAN M. BRITTON, EMPLOYEE	CLAIMANT
CITY OF CONWAY, SELF-INSURED EMPLOYER	RESPONDENT
ARK. MUN. LEAGUE, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JULY 23, 2021

Hearing before Administrative Law Judge O. Milton Fine II on July 22, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Mary K. Edwards, 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 July 22, 2021, 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. Without objection, the Commission file on this claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1, correspondence and other documents related to the claim, consisting of one (1) index page and six (6) numbered pages thereafter.

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The record reflects the following procedural history:

On or about¹ September 11, 2017, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to his lower back that same day while lifting weights as part of his SWAT team training. Per the Form AR-2 that was filed on September 19, 2019, Respondents accepted the claim as a medical-only one. On September 17, 2019, Claimant filed a Form AR-C. The next day, he emailed the Commission, requesting a hearing on his claim. The Legal Advisor Division attempted to set up conference regarding this matter. When Claimant failed to return the Legal Advisor Questionnaire, the Clerk of the Commission was asked on October 22, 2020, to assign it to an administrative law judge to conduct a hearing.

The file was assigned to me on November 9, 2020. The next day, I sent prehearing questionnaires to the parties. Because Claimant failed to file a response to the questionnaire, I returned the claim file to the Commission's general files on December 10, 2020.

On May 28, 2021, Respondents filed the instant motion. Therein, they alleged that dismissal of the claim was warranted under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) because Claimant has not prosecuted this matter since requesting a hearing on September 18, 2020. On June 1, 2021, I wrote Claimant, asking for a response to the motion within twenty (20) days. This letter was sent by both first-class and certified mail to the address for

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Claimant listed on his Form AR-C. He signed for the certified letter on June 3, 2021; and the first-class letter was never returned. However, no response was forthcoming from him.

On June 23, 2021, I scheduled a hearing on Respondents' motion for July 22, 2021, at 9:30 a.m. at the Commission in Little Rock. The hearing notice was sent to Claimant by certified and first-class mail to the same address as before. In this instance, he signed for the certified letter on June 25, 2021. Again, the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing proceeded as scheduled on July 22, 2021. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under § 11-9-702(d) and Rule 13.

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.

¹The document in question does not bear a file-mark.

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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; the claim is hereby dismissed without prejudice under AWCC R. 099.13.

III. DISCUSSION

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 this matter—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 July 22, 2021, hearing to argue against its dismissal) since the filing of his hearing request on September 18, 2020. Thus, the evidence preponderates that dismissal 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 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.

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137, 744 S.W.2d 402 (1988). In *Abo v. Kawneer Co.*, 2005 AWCC 226, 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. Based on the above authorities, I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.²

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

²“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).