BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H508105

PEDRO BALDEMAR UZ, EMPLOYEE **CLAIMANT**

EPA DEMOLITION & CONST., EMPLOYER **RESPONDENT**

GREAT DIVIDE INS. CO., CARRIER **RESPONDENT**

OPINION FILED AUGUST 20, 2026

Hearing before Administrative Law Judge O. Milton Fine II on August 20, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas (neither appearing).

Respondents represented by Ms. 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 August 20, 2026, in Little Rock, Arkansas. No testimony was taken in the case. Both Claimant and his counsel waived their appearance. Admitted into evidence were Commission Exhibit 1 and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of eight and seven pages, respectively.

The record reflects the following procedural history:

On December 22, 2025, through counsel, Claimant filed a Form AR-C. Therein, he alleged that he suffered injuries to his head, neck, back, left arm and shoulder, and other whole body on March 19, 2025, when he was struck by an object while traversing

a scaffold. The boxes on the form were checked to indicate that Claimant was seeking all manner of initial and additional benefits. In the letter that accompanied this filing, counsel did not request a hearing on the claim. Respodents' counsel made her entry of appearance on April 15, 2026.

Nothing further took place on the claim until June 22, 2026. 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 assigned to me on July 10, 2026; and on that same date, my office wrote Claimant and his counsel, asking for a response to the motion within 20 days. Claimant's counsel that same day wrote me:

> Dear Judge Fine:
>
> Please accept this letter as the Claimant's Response to the Respondent's Motion. Specifically, the Claimant does not object to the Respondent's Motion to Dismiss WITHOUT Prejudice. Furthermore, the Claimant and their attorney waive appearance for any hearing scheduled on the matter.

(Emphasis in original)

On July 15, 2026, a hearing on the Motion to Dismiss was scheduled for August 20, 2026, at 12:00 p.m. at the Commission in Little Rock. Notice of said hearing was furnished to both Claimant and his attorney. Notably, the copy sent to Claimant via certified mail was returned to the Commission, unclaimed, on August 5, 2026.

The hearing on the Motion to Dismiss proceeded as scheduled on August 20, 2026. Again, Claimant and his 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 his 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 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 since the filing of his Form AR-C on December 22, 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 (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 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).