

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H402969**

<b>HARRY L. BILLINGSLEY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ALLEGIS GROUP, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>INDEMNITY INS. CO. OF NO. AMER., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 3, 2025**

Hearing before Administrative Law Judge O. Milton Fine II on October 3, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Eric Newkirk, 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, 2025, in Jonesboro, 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, pleadings, correspondence and forms related to this claim, consisting of 17 and 19 pages, respectively.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on May 10, 2024, Claimant purportedly suffered an injury to his left knee when he blacked out from heat and fell at

BILLINGSLEY – H402969

work on May 1, 2024. According to the Form AR-2 that was filed on May 10, 2024, Respondents accepted the claim as compensable and paid medical and indemnity benefits pursuant thereto.

On May 6, 2024, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C. Therein, he alleged that his client injured his right knee in a “work accident” that allegedly took place on May 1, 2024. No boxes were checked on the form to indicate what initial and/or additional benefits that Claimant was seeking.

In an email to the Commission sent on September 1, 2024, Peoples moved to withdraw from the case. In an Order entered on September 25, 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 22, 2025. On that date, Respondents filed the instant motion and brief in support thereof, asking for dismissal of the claim under AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702(d) (Repl. 2012). The file was assigned to me on July 23, 2025; and on that same date, my office wrote Claimant, asking for a response to the motion within 20 days. The letter that was sent by first class mail to the Memphis, Tennessee address of Claimant listed in the file and on his Form AR-C was not returned. However, no response from him to the motion was forthcoming. On August 21, 2025, a hearing on the Motion to Dismiss was scheduled for October 3, 2024, at 12:00 p.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same Memphis,

BILLINGSLEY – H402969

Tennessee address as before. Someone with an illegible signature claimed the certified letter on August 28, 2025; and the one sent by first-class mail was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on October 3, 2025. Again, Claimant 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 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 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim for additional benefits 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

BILLINGSLEY – H402969

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, 2025, hearing to argue against its dismissal) since the filing of his Form AR-C on May 6, 2024. 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

BILLINGSLEY – H402969

without prejudice. I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.<sup>1</sup>

#### **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.**

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O. MILTON FINE II  
Chief Administrative Law Judge

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<sup>1</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).