

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H203870**

RANDAL L. BILLINGSLEY, EMPLOYEE	CLAIMANT
CORALEE'S MEMPHIS-STYLE CHICKEN, EMPLOYER	RESPONDENT
SECURITY NATL. INS. CO., CARRIER	RESPONDENT

OPINION FILED MARCH 18, 2024

Hearing before Administrative Law Judge O. Milton Fine II on March 15, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. William C. Frye, Attorney at Law, North 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 March 15, 2024, 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. In order to address adequately this matter under 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 without objection, I have into the record what has been marked as Commission Exhibit 1, forms, pleadings, and correspondence from the Commission’s file on the claim, consisting of 27 pages.

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The record reflects the following procedural history:

On May 25, 2022, Claimant filed a Form AR-C, alleging that he injured his back on April 15, 2022, while unloading a truck at work. No request for a hearing on the claim accompanied this filing. However, on July 22, 2022, Claimant wrote the Committee to request a hearing. The file was initially assigned to the Legal Advisor Division. Claimant expressed a willingness to mediate; but he failed to return his preliminary notice. For that reason, the file was assigned to my office on August 23, 2022. Prehearing questionnaires were issued to the parties on August 26, 2022. While in this instance Claimant promptly returned the preliminary notice, he failed to file a questionnaire response. For that reason, on September 22, 2022, my office returned his file to the Commission's general files.

On March 29, 2023, Respondents filed the instant Motion to Dismiss under AWCC R. 099.13. The file was reassigned to me on March 30, 2023; and on April 5, 2023, I wrote Claimant, requesting that he respond to the motion within 20 days. He did so on April 18, 2023. In this letter, received by my office on April 24, 2023, and indicating that its origin was the Craighead County Jail, Claimant wrote: "I Randal Billingsley with the AWCC # of H203870, object to the dismissal of my case. I plan on working on the case on my end very soon. Thank you." Based on this, I held the motion in abeyance and sent prehearing questionnaires to the parties on May 12, 2023. Claimant filed a timely response thereto on May 24, 2023. Respondents followed suit on June 12, 2023, representing that the claim

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had been controverted in its entirety. Informed that Claimant was still incarcerated in the Craighead County Jail and would be there until October 5, 2023, making it impractical for him to participate in a prehearing telephone conference and a hearing, I informed the parties on June 22, 2023, that I would continue to hold the Motion to Dismiss in abeyance and return the file to the Commission's general files until November 2023.

Respondents renewed their motion on November 21, 2023, emailing my office. For reasons unknown, this did not result in the file getting reassigned to me to hear the motion. In the meantime, on December 11, 2023, Claimant notified the Commission that his address had changed to 328 CR 390, Mountain Home, Arkansas 72635. On January 10, 2024, Respondents again renewed their Motion to Dismiss. In this instance, the Clerk of the Commission reassigned the file to my office on that same date. My office wrote Claimant on January 19, 2024, requesting another response to the motion within 20 days. The letter was sent via first-class and certified mail to his Mountain Home address. Someone with an illegible signature claimed the certified letter on February 1, 2024; and the first-class letter was not returned. However, no response from him to the motion was forthcoming this time. On February 9, 2024, a hearing on the motion to dismiss was scheduled for March 15, 2024, at 1:00 p.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant via first-class and

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certified mail to the same address as before. In this instance, both items were returned to the Commission with the notation:

RETURN TO SENDER
NO MAIL RECEPTACLE
UNABLE TO FORWARD

The hearing on the Motion to Dismiss proceeded as scheduled on March 15, 2024. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13.

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.
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; this claim for initial benefits is hereby dismissed without prejudice under AWCC R. 099.13.

III. DISCUSSION

AWCC R. 099.13 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 (including appearing at the March 15, 2024, hearing to argue against its dismissal) since the filing of his prehearing questionnaire response on May 24, 2023. Thus, the evidence preponderates that dismissal is warranted under Rule 13.

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. 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 for additional benefits 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).