

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H402866**

<b>JESSICA E. BONNER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>FMH CONVEYORS LLC, EMPLOYER</b>	<b>RESPONDENT</b>
<b>VALLEY FORGE INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 23, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on January 17, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Benjamin Daniel Davis, 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 January 17, 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. 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 blue-backed to the record documents from the Commission’s file on the claim, consisting of 22 pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010

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Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on May 3, 2024, Claimant purportedly suffered a strain injury to her left upper extremity at work on June 6, 2022. According to the Form AR-2 that was also filed on May 3, 2024, Respondents accepted the claim as a medical-only one.

On April 30, 2024, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C. Therein, she alleged that she was entitled to the full range of initial benefits as a result of a “crush injury to [her] left arm” and compensable consequence injuries to her arm, shoulder, and neck. Respondents’ co-counsel entered his appearance before the Commission on May 15, 2024. Also on that date, he propounded a set of interrogatories and requests for document production to Claimant’s counsel.

On September 6, 2024, Peoples moved for permission from the Commission to withdraw from his representation of Claimant. In an Order entered on October 3, 2024, under AWCC Advisory 2003-2, the Full Commission granted the motion.

On November 18, 2024, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). Therein, they alleged that more than six months had elapsed since

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the filing of the claim without a hearing request being made by Claimant. My office wrote Claimant on November 18, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Jonesboro address of Claimant as shown on her Form AR-C. The certified letter was returned to the Commission, unclaimed, on December 2, 2024, bearing the following notation:

RETURN TO SENDER  
ATTEMPTED NOT KNOWN  
UNABLE TO FORWARD

On December 10, 2024, a hearing on the Motion to Dismiss was scheduled for January 17, 2025, at 12:30 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 address as before. In this instance, on December 16, 2024, Claimant signed for the certified letter. And as before, the first-class letter was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on January 17, 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 her 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 her claim because she has taken no further action in pursuit of it (including appearing at the January 17, 2024, hearing to argue against its dismissal) since the filing of her Form AR-C on April 30, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702.

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

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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 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).