BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H507168

DONALD BOWERS, EMPLOYEE **CLAIMANT**

BRONCO INDUS. SVCS., LLC,
EMPLOYER **RESPONDENT**

NEW HAMPSHIRE INS. CO.,
CARRIER **RESPONDENT**

OPINION FILED AUGUST 6, 2026

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 6, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Rick Behring, Jr., 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 6, 2026, 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. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of 12 numbered pages. Also, 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 two

pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 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 Form AR-C that Claimant filed with the Commission on November 6, 2025, he allegedly suffered a compensable injury to his left hand on September 9, 2025. According to the Form AR-2 that was filed on May 19, 2026, Respondents accepted the claim as a medical-only one. On December 31, 2025, Claimant sent correspondence to the Commission, requesting a hearing on the claim. However, the Legal Advisor Division returned the file to the Commission's general files on March 20, 2026, because they could not make contact with Claimant.

The record reflects that nothing further took place on the claim until June 2, 2026. On that date, Respondents filed the instant motion, asking for dismissal of the claim under 11 C.A.R. § 25-110(d) (formerly AWCC R. 099.13). The file was assigned to me on June 2, 2026; and on June 4, 2026, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Arkoma, Oklahoma address that Claimant had furnished to the Commission. Claimant signed for the certified letter on June 20, 2026; and the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming.

On July 7, 2026, a hearing on the Motion to Dismiss was scheduled for August 6, 2026, at 11:00 a.m. at the Commission in Little Rock. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, the certified letter was claimed on July 11, 2026, while the first-class letter was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the foregoing authority.

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 initial benefits is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

III. DISCUSSION

11 C.A.R. § 25-110(d) (formerly 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).

No Form AR-C has been filed in this case. That is the means for filing a "formal claim." While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C. In *Cook v. Southwestern Bell Telephone Company*, 21 Ark. App. 29, 727 S.W.2d 862 (1987) the Arkansas Court of

Appeals discussed the minimum requirements necessary for correspondence to the Commission to constitute a claim for additional compensation for the purpose of tolling the applicable Statute of Limitations. There, the court held that an attorney's correspondence notifying the Commission that he has been employed to assist a claimant in connection with unpaid benefits is sufficient to state a claim for additional compensation where the correspondence also lists the claimant's name, the employer's name and the Commission file number. *See also Garrett v. Sears Roebuck and Company*, 43 Ark. App. 37, 858 S.W.2d 146 (1993). My review of the Commission's file discloses a document sufficient to constitute a claim for initial benefits under *Cook*, *supra*. That document is Claimant's June 24, 2025, email requesting an "appeal"—discussed above.

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 August 6, 2026, hearing to argue against its dismissal) since his file was returned to the Commission's general files on March 20, 2026. Thus, the evidence preponderates that dismissal is warranted under § 25-110(d).

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. Based on the foregoing, 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.

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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).