

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. G807158**

<b>THOMAS L. BOYETTE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ROACH MFG. CORP., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>TRAVELERS INDEMN. CO., CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT NO. 2</b>

**OPINION FILED SEPTEMBER 20, 2023**

Hearing before Chief Administrative Law Judge O. Milton Fine II on September 15, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents No. 1 represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2, represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas, excused from participation.

**I. BACKGROUND**

This matter comes before the Commission on the Motion to Dismiss filed by Respondents No. 1. A hearing on the motion was conducted on September 15, 2023, in Jonesboro, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents No. 1 were represented at the hearing by Mr. Guy Alton Wade, Attorney at Law, of Little Rock, Arkansas. Respondent No. 2, represented by Ms. Christy L. King, Attorney-at-Law, Little Rock, Arkansas, was excused from participation. The record consists of Respondents' Exhibit 1, pleadings, forms

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and correspondence related to the claim, consisting of five pages. In addition, without objection, the Commission's file has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on October 23, 2018, Claimant purportedly suffered an injury to his left hand at work on October 22, 2018, when his hand got caught in a falling scissor lift table. According to the Form AR-2 that was filed on November 2, 2018, Respondents No. 1 accepted the claim and paid medical and indemnity benefits pursuant thereto.

On May 16, 2019, through then-counsel Rainwater, Holt & Sexton, Claimant filed a Form AR-C, requesting a range of initial and additional benefits, and stated that the alleged accident resulted in injuries to "his right arm, hand, and other whole body." No hearing request accompanied this filing. Respondents No. 1 on May 17, 2019, informed the Commission that their position had not changed. Attorney Tod Bassett entered an appearance on behalf of Respondents No. 1 on May 20, 2019.

On March 12, 2020, Respondents No. 1 filed a joint petition with the Commission and requested a hearing thereon. The hearing was scheduled on March 16, 2020, for April 3, 2020, at 9:45 a.m. at the Craighead County Courthouse in Jonesboro. However, because of the COVID-19 pandemic, the hearing was cancelled.

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Claimant's then-counsel filed an identical copy of the earlier Form AR-C on September 21, 2020. They did this yet again on March 1, 2021, for no discernible reason; while in both instances they wrote that they were doing this "for statute [of limitations] purposes," the first Form AR-C remained in effect and operated to toll the running of the limitations period. Bassett retired from the practice of law as of December 31, 2020; and his partner, James Graves, moved to be substituted as counsel for Respondents. On May 21, 2021, Gary Davis entered his appearance as co-counsel to Claimant. To further compound the confusion in this matter, attorney Daniel Wren on November 24, 2021, informed the Commission by letter that Claimant had now hired him to prosecute this claim.

No further action on the claim took place until June 30, 2023. On that date, current counsel for Respondents No. 1 entered his appearance and filed the instant Motion to Dismiss. Therein, it was argued that dismissal was warranted under AWCC R. 099.13 because "Claimant has not done anything to pursue this matter or requested a hearing." On July 5, 2023, my office wrote Wren and Claimant, asking for a response to the motion within 20 days. This correspondence was sent to Claimant by first-class and certified mail to the address for him listed in the file and on his Forms AR-C. However, both of these items were returned to the Commission, undelivered.

Meanwhile, on June 29, 2023, Wren filed with the Clerk of the Commission a motion to withdraw from the case. On July 11, 2023, the Full

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Commission entered an order granting the motion under AWCC Advisory 2003-2. Not surprisingly, no response to the Motion to Dismiss was forthcoming from either Claimant or his now-former counsel.

A hearing on the Motion to Dismiss was scheduled on July 28, 2023, for September 15, 2023, at 11:00 a.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to the now-*pro se* Claimant (using the same address as before) by certified and first-class mail. In this instance, the U.S. Postal Service could not confirm delivery of the certified letter; but neither it nor the first-class letter was returned. The evidence thus preponderates that he received notice of the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled on September 15, 2023. Again, Claimant failed to appear. Respondents No. 1 appeared through counsel and argued for dismissal of the action under the aforementioned authority.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.

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3. Respondents No. 1 have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.
4. Respondents' Motion to Dismiss should be, and hereby is, granted.
5. This claim is hereby dismissed *without prejudice*.

### III. DISCUSSION

AWCC 099.13 provides:

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). (Emphasis added)

As the moving party, Respondents No. 1 under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of this 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 September 15, 2023, hearing to argue

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against its dismissal—since the March 1, 2021, re-filing of his Form AR-C. 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). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents No. 1 at the hearing asked for a dismissal without prejudice. Based on the above authorities, I agree and find that the dismissal of the 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).