

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H407204**

SALLY BROWN, EMPLOYEE

CLAIMANT

**BURGER KING RESTAURANTS,
EMPLOYER**

RESPONDENT

**PREVISOR INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED JUNE 23, 2026

Hearing before Administrative Law Judge O. Milton Fine II on June 19, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Karen H. McKinney, 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 June 19, 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, forms, pleadings, reports, and correspondence related to this claim, consisting of 54 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

BROWN – H407204

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. Moreover, the transcript of the November 14, 2025, hearing in this matter has been incorporated herein by reference.

The record shows the following procedural history:

Per the First Report of Injury or Illness filed on November 7, 2024, Claimant purportedly suffered a soft tissue injury to her head on June 19, 2024, when she fell at work. According to the Form AR-2 that was filed on November 8, 2024, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On November 5, 2024, through then-counsel Gregory Giles, Claimant filed a Form AR-C, requesting the full range of initial and additional benefits and alleging that her neck and back were also hurt in the alleged fall. No hearing request accompanied this filing. On January 16, 2025, Giles moved to withdraw from his representation of Claimant. In an order entered on January 29, 2025, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2. However, this order was set aside by the Full Commission on February 5, 2025, in light of Claimant's objection to the withdrawal. The matter was assigned to Administrative Law Judge Steven Porch to consider Giles' motion. In an order entered on February 18, 2025, Judge Porch granted the motion to withdraw.

BROWN – H407204

On February 28, 2025, Scott Hunter, Jr., entered his appearance on behalf of Claimant and filed another Form AR-C. Therein, Claimant claimed only a back injury, but requested the full range of initial benefits in connection with it. Respondents advised the Commission on March 4, 2025, that their position on the claim had not changed. Hunter requested a hearing on the claim on March 6, 2025. Prehearing questionnaires were issued to the parties by Judge Porch's office on March 17, 2025. That same day, Respondents' counsel made her entry of appearance. On April 7 and 14, 2025, respectively, the parties timely filed their responses to the prehearing questionnaire. However, on May 8, 2025, Hunter withdrew the hearing request. Without objection, the file was returned to the Commission's general files on that date.

On June 3, 2025, Hunter filed a motion to withdraw from his representation of Claimant. In an order entered on July 30, 2025, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until September 5, 2025. On that date, Respondents filed a motion, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012), along with 11 C.A.R. § 25-110(d). Therein, they argued that Claimant had failed to prosecute her claim. The file was reassigned to Judge Porch. On September 9, 2025, his office wrote Claimant, requesting a response to the motion within 20 days. However, no response was forthcoming. On October 9, 2025, the judge

BROWN – H407204

scheduled a hearing for November 14, 2025, at the Craighead County Courthouse in Jonesboro. Claimant claimed the copy of the Notice of Hearing that she received via certified mail. That hearing proceeded as scheduled. Claimant appeared at the hearing and objected to dismissal, testifying that she wanted to litigate the merits of her claim. In an opinion handed down on February 2, 2026, Judge Porch denied the motion to dismiss.

On March 24, 2026, this file was transferred to me; and my office issued new prehearing questionnaires to the parties. However, Claimant failed to file a response thereto by the April 13, 2026, deadline. For that reason, on April 20, 2026, this file was returned to the Commission's general files.

On April 21, 2026, Respondents filed the instant motion, citing the same provisions that were in their first motion to dismiss. Therein, they alleged that Claimant has taken no further measures to pursue her claim, despite objecting to dismissal and requesting a hearing, since the November 14, 2025, hearing. On April 22, 2026, my office wrote Claimant at the Jonesboro address that was confirmed as accurate during the aforementioned hearing, giving her 20 days to respond to the motion. She claimed the certified mailing on April 25, 2026; and the letter sent to her by first-class mail was not returned. Despite this, Claimant did not respond to the correspondence. On May 13, 2026, a hearing on the motion was scheduled for June 19, 2026, at 11:00 a.m. at the Craighead County

BROWN – H407204

Courthouse. On May 21, 2026, someone named “Abdullah” signed for the certified mailing of the notice.

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 above 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 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim 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

BROWN – H407204

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 June 19, 2026, hearing to argue against its dismissal) since she appeared at the previous hearing on November 14, 2025. Thus, the evidence preponderates that dismissal is warranted under the above provision. Because of this, the issue regarding the application § 11-9-702(a)(4) & (d) is moot and will not be addressed.

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.

BROWN – H407204

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 with prejudice. But based on the foregoing, I 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 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).