BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H600661

CANDY BURNETT, EMPLOYEE **CLAIMANT**

TRUMANN OPS, INC.,
SELF-INSURED EMPLOYER **RESPONDENT**

CANNON COCHRAN MGMT. SVCS., INC.,
THIRD-PARTY ADM'R **RESPONDENT**

OPINION FILED OCTOBER 23, 2026

Hearing before Administrative Law Judge O. Milton Fine II on October 23, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Scott Hunter, Jr., Attorney at Law, Jonesboro, Arkansas (neither appearing).

Respondents represented by Mr. Jarrod S. Parrish, 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 October 23, 2026, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant failed to appear at the hearing; and her counsel waived his appearance. Admitted into evidence were Commission Exhibit 1 and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim. *See* 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").

The record reflects the following procedural history:

On February 2, 2026, through counsel, Claimant filed a Form AR-C. Therein, she alleged that she suffered an injury to her left shoulder at work on December 4, 2025, while lifting laundry. The boxes on the form were checked to indicate that Claimant was seeking all manner of initial benefits. Per the Form AR-2 that was filed on February 17, 2026, Respondents accepted the claim as a medical-only one. Respondents' counsel made their entry of appearance on February 5, 2026; and in an email to the Commission on February 20, 2026, they confirmed that Respondents' position on the claim had not changed.

Nothing further took place on the claim until August 3, 2026. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702 (Repl. 2012) due to Claimant's alleged failure to, inter alia, make a bona fide hearing request within the previous six months. The file was assigned to me on August 4, 2026; and the next day, my office wrote Claimant and her counsel, asking for a response to the motion within 20 days. Claimant's counsel indicated initially that they did not object to dismissal; and his office confirmed this via email on October 20, 2026: "With regard to the dismissal, we do not object to the dismissal of this claim." In addition, a request was made to be excused from participation in the hearing.

On September 3, 2026, a hearing on the Motion to Dismiss was scheduled for October 23, 2026, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro.

Notice of said hearing was furnished to both Claimant and her attorney. Notably, the copy sent to Claimant via certified mail was returned to the Commission, unclaimed, on September 30, 2026.

The hearing on the Motion to Dismiss proceeded as scheduled on October 23, 2026. Again, Claimant and her counsel 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 claim.
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 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 since the filing of her Form AR-C on February 2, 2026. Thus, the evidence preponderates that dismissal is warranted under § 25-110(d). Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9-702(d) (Repl. 2012).

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; and based on the evidence, 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 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).