

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301098**

STEVEN C. CARRICK, EMPLOYEE	CLAIMANT
CIRCLE K STORES, INC., EMPLOYER	RESPONDENT
INDEMN. INS. CO. OF NO. AMER., CARRIER	RESPONDENT

OPINION FILED DECEMBER 18, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on December 13, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Lee J. Muldrow, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on Respondents' Motion to Dismiss. In addition to Claimant's testimony, the record consists of Commission Exhibit 1, the October 9, 2023, Order by Administrative Law Judge Chandra Black, copies of electronic correspondence, the Notice of Hearing, and proof of service thereof, consisting of ten numbered pages; Claimant's Exhibit 1, forms, pleadings and correspondence, consisting of 11 pages; Respondents' Exhibit 1, the Order, consisting of three numbered pages; Respondents' Exhibit 2, their prehearing questionnaire response, consisting of four numbered pages; and

CARRICK – H301098

Respondents' Exhibit 3, their August 22, 2023, letter to Judge Black, consisting of two numbered pages.

In the above-referenced Order, Judge Black wrote:

Accordingly, the Commission grants [R]espondents' motion to compel. Claimant is ordered to execute a HIPAA [Health Insurance Portability and Accountability Act]-compliant [release] prepared and provided by [R]espondents. Claimant must return the executed release to [R]espondents' counsel no later than October 23, 2023. Any failure to abide by this [O]rder may subject [C]laimant to sanctions, including without limitation contempt or dismissal of his claim.

On October 31, 2023, Respondents moved for dismissal of this claim, based on Claimant's alleged failure to obey the above directive. He was served with the November 2, 2023, Notice of Hearing on November 3, 2023, via certified mail. At the December 13, 2023, hearing, Claimant in his testimony admitted that (1) he received notice of the hearing; (2) despite his understanding that he was to comply with the October 9, 2023, Order—specifically the language therein quoted above—he has failed and refused to do so. He compounded this non-compliance by again declining at the hearing to sign the release in question. In so doing, he raised the same objections that Judge Black had already carefully considered and properly rejected in her Order.

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, and having had an opportunity to hear

CARRICK – H301098

the testimony of Claimant, 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. Claimant has failed to prosecute his claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.
5. The claim is hereby dismissed *without prejudice*.

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)(discussing, *inter alia*, Rule 13).

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 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).

CARRICK – H301098

The evidence adduced at the hearing shows that Claimant without good cause has repeatedly knowingly failed and refused to cooperate during the discovery phase of this matter by executing a HIPAA-compliant medical release as directed by Judge Black. Thus, the preponderance of the evidence establishes that he has failed to prosecute his claim. He was duly warned that this non-compliance could result in dismissal of his claim; and indeed it should. Dismissal is clearly warranted here under Rule 13. Respondents' Motion to Dismiss is hereby granted.

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)). Based on the above authorities, I find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

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).

CARRICK – H301098

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