

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H307249**

<b>JENNIFER N. CARTER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BAPTIST HEALTH, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>CLAIMS ADMIN. SVCS., THIRD-PARTY ADM'R</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 5, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on December 5, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Melissa Wood, 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 December 5, 2024, 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 were Commission Exhibit 1 (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”) and Respondents’ Exhibit 1, forms, pleadings, reports, and correspondence related to this claim, consisting of 15 and 12 pages, respectively.

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The record shows the following procedural history:

Per the First Report of Injury or Illness filed on November 7, 2023, Claimant purportedly suffered an injury to her lower back at work on September 24, 2023, while performing a “patient transfer.” According to the Form AR-2 that was filed on November 8, 2023, Respondents accepted the claim as a medical-only one.

On November 5, 2023, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C, requesting the full range of initial benefits in connection with an injury to her back that she allegedly suffered at work on August 24, 2023. Counsel in an email accompanying this filing stated that he was “not asking for a hearing.” Respondents’ counsel entered their appearance on November 9, 2023.

Claimant requested a one-time change of physician. Rosalyn Watts, then-director of the Commission’s Medical Cost Containment Division, entered a Change-of-Physician Order on February 13, 2024, changing her authorized treating physician from OrthoArkansas to Dr. Reza Shahim, and scheduling an appointment for her with Shahim for February 19, 2024.

On August 19, 2024, Peoples moved to withdraw from his representation of Claimant. In an Order entered on September 18, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until October 4, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-

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702(a)(4) (Repl. 2012) because “Claimant has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” My office wrote Claimant on October 9, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Conway, Arkansas address for her listed in the file and on her Form AR-C. A “Danielle Carter” signed for the certified letter on October 11, 2024; and the first-class letter was not returned. Regardless, no response from her to the motion was forthcoming. On October 30, 2024, a hearing on the Motion to Dismiss was scheduled for December 5, 2024, at 12:30 p.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, Claimant claimed the certified letter on November 1, 2024; and the first-class letter was, again, 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 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):

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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 AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this claim for initial benefits is hereby dismissed without prejudice under AWCC R. 099.13.

### **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).

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

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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 he has taken no further action in pursuit of it (including appearing at the December 5, 2024, hearing to argue against its dismissal) since the entry of the Change-of-Physician Order on February 13, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the argument made under § 11-9-702(a)(4) 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. 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. I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.<sup>1</sup>

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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).

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**IV. CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby dismissed *without prejudice*.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge