

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NOS. H004961 & H102650**

<b>JOHNNY COBURN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ARKANSAS STEEL ASSOC., LLC EMPLOYER</b>	<b>RESPONDENT</b>
<b>PHOENIX INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 20, 2025**

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 24, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. April K. Rogers, Attorney at Law, Conway, Arkansas.

Respondents represented by Ms. Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On July 24, 2025, the above-captioned claims were heard in Little Rock, Arkansas. A prehearing conference took place on March 31, 2025. The Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

The parties discussed the stipulations set forth in Commission Exhibit 1. Following an amendment of Stipulation No. 3 at the hearing, they are the following, which I accept:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The employee/employer/carrier relationship existed among the parties on June 29, 2020, and on October 7, 2020.
3. Respondents accepted as compensable a neck strain and a right shoulder injury as a result of the alleged June 29, 2020, incident (Claim No. H004961), and have paid benefits pursuant thereto.
4. Respondents have controverted Claim No. H102650 in its entirety.

Issues

Per the Prehearing Order, the following issues were to have been litigated at the hearing:

1. Whether Claim No. H102650 should be dismissed for want of prosecution pursuant to AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)).
2. Whether Claimant sustained compensable injuries to his neck, back, and right shoulder as a result of specific incident on or about June 29, 2020 (Claim No. H004961).
3. Whether Claimant sustained compensable injuries to his neck, back, and right shoulder as a result of a specific incident on or about October 7, 2020, that were either (a) a compensable aggravation or (b) a recurrence of his alleged June 29, 2020, injuries (Claim No. H102650).

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4. Whether Claimant is entitled to reasonable and necessary medical treatment (H004961 & H102650).

All other issues have been reserved. However, following a conference of the parties that took place prior to the commencement of the hearing but was memorialized in the record, Issues Nos. 2-4 were reserved. This left as the sole issue whether H102660 should be dismissed for want of prosecution.

### Contentions

In light of the substantial narrowing of the issues at the hearing, the contentions of the parties as set forth in the Prehearing Order (incorporated therein by reference from their prehearing responses) are largely moot. They are nonetheless listed here:

### Claimant

1. Claimant contends that he worked for Respondent employer and suffered a specific-incident injury on June 29, 2020, in the course and scope of his employment; and he suffered compensable injuries to his neck, pain across both shoulders, mainly affecting his right shoulder, when a heavy metal grate fell on him.
2. Claimant further contends that Respondents are responsible for the emergency room visit on October 7, 2020, as either a new compensable injury or a flare-up of his injury from June 29, 2020, including his mid-back (thorax) problems.

Respondents

1. Claimant sustained an injury to his neck and right shoulder on June 29, 2020, when a metal grate struck him. All appropriate benefits have been paid.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe his demeanor, 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 July 24, 2024, hearing thereon pursuant to 11 C.A.R. § 25-110(d).
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute Claim No. H102650 under 11 C.A.R. § 25-110(d).
4. Respondents' Motion to Dismiss should be, and hereby is, granted.
5. Claim No. H102650 is hereby dismissed *with prejudice*.
6. All issues pertaining to Claim No. H004961 have been reserved.

**CASE IN CHIEF**

Summary of Evidence

The sole witnesses at the hearing was Claimant.

In addition to the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant’s Exhibit 1, a compilation of his medical records, consisting of four index pages and 118 numbered pages thereafter; Claimant’s Exhibit 2, non-medical records, consisting of one index page and seven numbered pages thereafter; Respondents’ Exhibit 1, another compilation of Claimant’s medical records, consisting of two index pages and three numbered pages thereafter; and Respondents’ Exhibit 2, non-medical records, consisting of two index pages and two numbered pages thereafter.

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 forms, pleadings, and correspondence from the Commission’s file on the claim, totaling 72 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.

Evidence

With respect to Claim No. H102650, the evidence reflects that on March 16, 2021, Claimant through then-counsel Steven R. McNeely filed a Form AR-C, alleging that he was entitled to benefits for an injury to his back that he allegedly

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sustained at work on October 7, 2020, when he strained his mid-back while prying on a metal plate. He added that this constituted an “aggravation of his 6/29/2020 larger injury” [i.e., Claim No. H004961].” Respondents submitted a Form AR-2 in response on March 18, 2021, informing the Commission that they were controverting the claim. Respondents’ counsel entered her appearance on March 30, 2021.

McNeely requested a hearing on both H004961 and H102650 on March 20, 2023. Accompanying the request was a prehearing questionnaire response. Respondents submitted their response on May 2, 2023. A prehearing conference on both claims was scheduled for August 14, 2023. Pursuant to that conference, a hearing was scheduled for October 26, 2023, on the following issues:

1. Whether Claimant sustained compensable injuries to his neck, back, and right shoulder as a result of specific incident on or about June 29, 2020 (H004961).
2. Whether Claimant sustained compensable injuries to his neck, back, and right shoulder as a result of a specific incident on or about October 7, 2020, that were either (a) a compensable aggravation or (b) a recurrence of his alleged June 29, 2020, injuries (H102650).
3. Whether Claimant is entitled to reasonable and necessary medical treatment (H004961 & H102650).

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All other issues were reserved.

On September 21, 2023, McNeely wrote an email to me that requested that the hearing be canceled. He stated: “Your Honor we have most of the issues resolved.” Based on this request, and with no objection by Respondents, the hearing was cancelled; and both claims were returned to the Commission’s general files.

Nothing further took place on Claim No. H102650 until February 2, 2024. On that date, Respondents filed a Motion to Dismiss under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012). In support of their motion, Respondents alleged that no hearing had yet taken place on the claim, and that no bona fide hearing request had been made in the previous six months. The file was reassigned to me on February 2, 2024; and that same date, my office wrote Claimant and McNeely, requesting a response to the motion within 20 days. McNeely responded via email on February 9, 2024, stating: “Your Honor the claimant objects to their motion to dismiss and request[s] a hearing. The issues are fully laid out in the attached PHQ [prehearing questionnaire response]. Based on this, I informed the parties that I would take the Motion to Dismiss under advisement and proceed to a hearing on the merits. Respondents filed their prehearing response on March 27, 2024. A prehearing conference was scheduled for May 6, 2024. But on May 2, 2024, McNeely wrote me:

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Your Honor:

The claimant respectfully withdraws his objection to the Respondents['] Motion to [D]ismiss and withdraws his hearing request, concerning H102650 DOI 10/7/2020, based on the attached email.

I do not believe there is a need for the phone conference Monday. My understanding is when the parties are in agreement we can fill out interrogatories and submit those to have [this] claim dismissed.

In response to McNeely's follow-up email conveying the same information, I responded to the parties on May 2, 2024:

Based on this, my office will send out interrogatories for Claimant to answer to confirm that he has no objection to [the] dismissal of H102650.

If these are not returned in 30 days, my office will simply schedule a hearing on the motion to dismiss in Little Rock.

As for H004961, there is no motion to dismiss pending. Based on Claimant's withdrawal of his hearing request, I am returning the file to the Commission's general files.

My office sent the aforementioned interrogatories to McNeely on May 2, 2024. Because they were not received within the 30-day deadline, my office emailed the parties to schedule a hearing on the Motion to Dismiss. But on June 12, 2024, McNeely moved to withdraw from his representation of Claimant. His motion contains the following passage:

This claim has changed his mind on hav[ing] the 10/7/20 H102650 dismissed; in fact this claimant has changed his mind or position so much it is repugnant to the undersigned attorney.

In an Order entered on June 28, 2024, I granted McNeely's motion under AWCC Advisory 2003-2.

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On July 2, 2024, I scheduled a prehearing telephone conference for August 12, 2024, on both of the above-captioned claims. But on August 5, 2024, Claimant's current counsel made her entry of appearance and requested a continuance. I granted the continuance for 30 days, and informed the parties that I was continuing to hold the Motion to Dismiss in abeyance. Another prehearing telephone conference was set for October 7, 2024. But Claimant's counsel again requested a continuance, citing "communication issues" and the belief that the additional time would allow for an amicable resolution of the matter. However, the conference took place as scheduled. By agreement of the parties at that conference, Claim No. H004961 was returned to general files so that discovery could be completed; and Claim No. H102650 would proceed to a hearing on the Motion to Dismiss. In a response dated October 28, 2024, Claimant's counsel objected to the dismissal of the latter claim and requested a hearing. Another conference on both files was eventually scheduled for March 31, 2025. That conference led to the setting of the instant hearing for June 12, 2025, and then the re-setting of such at the request of Claimant's counsel.

At the hearing, as alluded to above, Claimant indicated that he was reversing course and now not only no longer objected to the dismissal of Claim No. H102650, but was amendable to its dismissal *with prejudice*. When questioned by both sides, he testified as follows:

MS. ROGERS: (Continuing)

Q. Is it your intention to agree to a dismissal of Claim H102650?

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A. Yes.

Q. And have you had time to consult with counsel about that?

A. Yes.

Q. And you understand what that means, the dismissal of that?

A. Yes.

Q. And you understand that you won't be able to bring that claim again at a later time?

A. Yes.

Q. Okay. And then you also have Claim H004961?

A. Yes.

Q. And that's for an alleged injury of the head, neck, shoulder, and back?

A. Yes.

Q. And do you understand that the issues of that claim will be reserved today?

A. Yes.

...

BY MS. MARKHAM:

Q. Mr. Coburn, an AR-C was filed on your behalf under Claim No. H102650 on March 16, 2021, is that correct?

A. Correct.

Q. And in that matter it is alleged that you sustained an injury to your back as an aggravation of a previous injury of June 29, 2020, correct?

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A. What's that date again for the—

Q. June 29, 2020.

A. Yes.

Q. Okay. And it's your desire today to voluntarily dismiss that claim with prejudice, is that correct?

A. Correct.

Q. You understand that the phrase "with prejudice" means that you can't come back and refile that claim?

A. Yes.

Q. Okay. And you've had an opportunity to speak with your attorney about that issue?

A. Yes.

Q. And it is your desire as we proceed forward to have that claim dismissed?

A. Yes.

### Discussion

11 C.A.R. § 25-110(d) 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). In turn, Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) reads:

(4) If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after

hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

...

(d) If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subsection (b) of this section.

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” 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).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

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I credit Claimant's testimony as set above. His desire to dismiss Claim No. H102650 corresponds with the procedural history of this matter, which readily reflects a lack of its prosecution. Thus, the evidence preponderates that dismissal is warranted under 11 C.A.R. § 25-110(d). Because of this finding, the application of § 11-9-702(a)(4) 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. 137, 744 S.W.2d 402 (1988). Based on the foregoing, I find that the dismissal of this claim should be and hereby is entered *with prejudice*.

### **CONCLUSION**

Judgment is hereby rendered in accordance with the Findings of Fact and Conclusions of Law set forth above.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge