

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H307185**

LARRY T. CRAWFORD, EMPLOYEE	CLAIMANT
RICELAND FOODS, INC., EMPLOYER	RESPONDENT
SAFETY NAT'L CASUALTY CORP., CARRIER	RESPONDENT

OPINION FILED OCTOBER 21, 2024

Hearing before Administrative Law Judge O. Milton Fine II on October 18, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Eric Newkirk, 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 18, 2024, in Jonesboro, 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 and Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of 21 and 22 pages, respectively.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on November 10, 2023, Claimant purportedly suffered an injury to his left knee while walking to work on October 31, 2022. He related that he slipped and twisted his knee while rearranging bags on a

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palletizer. According to the Form AR-2 that was filed on November 10, 2023, Respondents accepted the claim as a medical-only one.

On November 2, 2023, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C. Therein, he alleged that his client was entitled to the full range of additional benefits. In an email accompanying this filing, Peoples stated that he was “not requesting a hearing.” Respondents’ counsel entered his appearance on December 15, 2023. That same day, Peoples emailed the Commission, seeking a one-time change of physician on behalf of his client. The doctor that was the subject of the request, Joel Smith, M.D., declined to accept Claimant as a patient.

On March 4, 2024, Peoples moved to withdraw from the case. His motion includes the following allegation: “Claimant has failed/refused to communicate with me regarding this claim, despite repeated attempts.” In an Order entered on April 10, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until June 24, 2024. On that date, Respondents filed the instant motion and brief in support thereof, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). My office wrote Claimant on June 26, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Jonesboro address of Claimant listed in the file and on his Form AR-C. “Bobbie Crawford” signed for the certified letter on June 29, 2024; and the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming.

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On July 17, 2024, a hearing on the Motion to Dismiss was initially scheduled for September 6, 2024, at 1:00 p.m. at the Craighead County Courthouse in Jonesboro. However, on September 3, 2024, the hearing was re-set for October 18, 2024, at 10:30 a.m. at the same location. The Notice of Hearing 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 September 5, 2024; and the one sent by first-class mail was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on October 18, 2024. Again, Claimant 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 matter.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.

4. The Motion to Dismiss is hereby granted; this claim for additional 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 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 his claim because she has taken no further action in pursuit of it (including appearing at the October 18, 2024, hearing to argue against its dismissal) since the filing of his change-of-physician request on December 15, 2023. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702.

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*.¹

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits 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).