

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H502654**

REGINALD D. DAVIS, EMPLOYEE	CLAIMANT
PASCHALL TRUCK LINES, INC., EMPLOYER	RESPONDENT
GREAT AMERICAN ALLIANCE INS. CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 19, 2025

Hearing before Administrative Law Judge O. Milton Fine II on September 19, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Zachary F. Ryburn, Ryburn Law Firm, Attorneys 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 September 19, 2025, 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 was 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”), forms, pleadings, and correspondence related to this claim, consisting of 22 pages.

DAVIS – H502654

The record shows the following procedural history:

Per the First Report of Injury or Illness that was filed on April 29, 2025, Claimant purportedly suffered an injury to his left shoulder at work on April 17, 2024, when wind caught the trailer door that he had been holding. According to the Form AR-2 that was filed on April 30, 2025, Respondents accepted the claim as compensable and paid medical and indemnity benefits pursuant thereto.

On May 2, 2025, he requested his one-time change of physician. Nothing in the file, however, reflects that the request was processed. Respondents' counsel entered his appearance on December 20, 2024.

On June 22, 2025, Claimant filed a Form AR-C. Therein, Claimant stated that he also hurt his neck in the alleged incident. When marking the benefit(s) he was seeking, he checked "Other" and added: "Appeal MMI and IR and jurisdiction of claim." He attached a typewritten statement to the form. Respondents' counsel entered his appearance before the Commission on June 24, 2025. On July 18, 2025, Claimant wrote the Commission:

I am requesting a mediation hearing to determine whether Arkansas has jurisdiction of this claim[.] [A]attached is [a] Location of Employment stating all work[-]related injuries will be under Kentucky Workers['] Compensation.

However, the Legal Advisor Division declined to conduct the mediation, noting that the claim was still before the Medical Cost Containment Division to process the change-of-physician request. The request ended up not getting addressed on the basis that the Claimant elected to pursue relief in Kentucky instead. See *infra*.

The record reflects that nothing further took place on the claim until July 18, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim because Claimant has indicated that “he has taken steps to file his claim in Kentucky . . . [and] has no interest in pursuing his claim in Arkansas.” The file was assigned to me on July 29, 2025; and on July 30, 2025, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Bay City, Texas address for Claimant that was listed in the file and on his Form AR-C. The certified letter was returned to the Commission, unclaimed, on September 2, 2025; but the first-class letter was not returned. On August 3, 2025, Claimant filed a response to the motion, stating that he was joining in the request that the claim be dismissed because Respondents “acted in bad faith” in filing the First Report of Injury or Illness in Arkansas, when the matter should have been brought in Kentucky.

On August 5, 2025, a hearing on the Motion to Dismiss was scheduled for September 19, 2025, at 12:30 p.m. at the Craighead County Courthouse in Jonesboro. The certified mailing of the Notice of Hearing to Claimant was returned to the Commission, unclaimed, on September 9, 2025; but the first-class mailing was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through

DAVIS – H502654

counsel and argued for dismissal under AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)).

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. The evidence preponderates that Claimant has failed to prosecute his 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) (formerly 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.

DAVIS – H502654

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 he failed to appear at the September 19, 2025, hearing to argue against its dismissal. This stands to reason, since he has expressed his agreement with the dismissal because he wishes to pursue relief before the Kentucky Workers' Compensation Commission instead. Thus, the evidence preponderates that dismissal of the claim is warranted under the above-referenced authority.

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*

DAVIS – H502654

Adjustment Bureau v. Strong, 75 Ark. 249, 629 S.W.2d 284 (1982)).

Respondents at the hearing asked for a dismissal without prejudice. Based on the foregoing, 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 initial 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).