BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H502975

RODERICK DAVIDSON, EMPLOYEE **CLAIMANT**

CITY OF LITTLE ROCK,
SELF-INSURED EMPLOYER **RESPONDENT**

RISK MGMT. SOLUTIONS,
THIRD-PARTY ADM'R **RESPONDENT**

OPINION FILED AUGUST 27, 2026

Hearing before Administrative Law Judge O. Milton Fine II on August 27, 2026, 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 August 27, 2026, 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 and Respondents' Exhibit 1, forms, pleadings, reports, and correspondence related to this claim, consisting of nineteen and ten pages, respectively. 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").

The record shows the following procedural history:

Per the First Report of Injury or Illness filed on May 16, 2025, Claimant purportedly suffered injury at work on April 28, 2025, when his parked work truck was struck by another vehicle. According to the Form AR-2 that was filed on May 16, 2025, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On May 13, 2025, through then-counsel Robert Buckalew, Claimant filed a Form AR-C, requesting the full range of initial and additional benefits in connection with the aforementioned incident, and alleging that he sustained injuries to his shoulders, neck and back. No hearing request accompanied this filing.

The record reflects that nothing further took place on the claim until May 12, 2026. On that date, Respondents' counsel made her entry of appearance and filed the instant motion, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702(d) (Repl. 2012) and 11 C.A.R. § 25-110(d). Therein, they represented that only Claimant's back injury had been accepted. They argued that "[m]ore than six months have passed since Claimant filed an AR-C with the Commission . . . [and that he] has not sought any type of bona fide hearing before the . . . Commission over the last six months." On May 13, 2026, my office wrote Claimant and his attorney, asking for a response to the motion within 20 days. Mr. Buckalew responded the same day, writing:

> Please accept this letter on behalf of Roderick Davidson as his response to the Motion to Dismiss of the Respondent for want of prosecution. This claim was originally accepted as being compensable, benefits have been paid, and the Claimant has had ongoing medical issues since the inception of this claim.
>
> There is absolutely no reason to dismiss this claim since the Respondents accepted it as being compensable and it is still a viable claim.
>
> As you are aware, a claim cannot be dismissed without a hearing. Since no hearing has been requested, please return this claim to general files.

On May 26, 2026, Respondents withdrew their motion. For that reason, no further action was taken on it, and the file was returned to the Commission's general files. That same day, Buckalew wrote Claimant, informing him that because Claimant had returned to work and was not going to seek medical or other benefits under his claim, he was going to withdraw from the case. The Full Commission treated this correspondence as a motion to withdraw. In an order entered on June 24, 2026, pursuant to AWCC Advisory 2003-2, the Full Commission granted the motion and allowed Buckalew to withdraw as Claimant's counsel.

On June 26, 2026, Respondents re-filed the instant Motion to Dismiss. The file was reassigned to me; and on June 30, 2026, I wrote Claimant, requesting a response to the motion within 20 days. The letter was sent by certified and first-class mail to the post office box address for Claimant listed on his Form AR-C.

However, both items of correspondence were returned to the Commission; and, unsurprisingly, no response to the motion was forthcoming.

On July 21, 2026, a hearing on the Motion to Dismiss was scheduled for August 27, 2026, at 10:00 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant via certified mail to the same address as before. In this instance, Claimant signed for the mailing on July 27, 2026; and 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 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):

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) 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 he has taken no further action in pursuit of it (including appearing at the August 27, 2026, hearing to argue against its dismissal) since the filing of his Form AR-C on May 13, 2025. Thus, the evidence preponderates that dismissal is warranted under the above provision.

Because of this finding, the argument made under § 11-9-702(d) 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*.[1]

IV. 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.

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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).