BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H505885

DONALD W. DEAN, EMPLOYEE **CLAIMANT**

DEDMAN SANITATION,
EMPLOYER **RESPONDENT**

AMGUARD INS. CO.,
CARRIER **RESPONDENT**

OPINION FILED SEPTEMBER 22, 2026

Hearing before Chief Administrative Law Judge O. Milton Fine II on September 18, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Karen H. McKinney, 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 September 18, 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 was Respondents' Exhibit 1, forms, pleadings, reports, and correspondence related to this claim, consisting of five pages. 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 documents from the Commission's file on the claim, consisting of four

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.

The record shows the following procedural history:

Per the First Report of Injury or Illness filed on September 19, 2025, Claimant purportedly suffered a fracture injury to his left index finger on September 10, 2025, when he was guiding a dumpster to a truck at work. According to the Form AR-2 that was also filed on September 19, 2025, Respondents accepted the claim as a medical-only one. Claimant continued to be paid full salary.

On September 12, 2025, Claimant filed a Form AR-C, requesting initial temporary total disability benefits in connection with his alleged finger injury. No hearing request accompanied this filing.

The record reflects that nothing further took place on the claim until July 9, 2026. On that date, Respondents filed a motion, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012), along with 11 C.A.R. § 25-110(d). Therein, they argued that Claimant had failed to prosecute his claim. The file was reassigned to me on July 10, 2026. On July 13, 2026, my office wrote Claimant, requesting a response to the motion within 20 days. The letter was sent by first class and certified mail to the Trumann, Arkansas address for him listed in the file and on his Form AR-C. "Andrea Mason" signed for the

certified letter on July 16, 2026; and the one sent via first-class mail was not returned. But no response from Claimant to the motion was forthcoming. On August 12, 2026, a hearing on the Motion to Dismiss was scheduled for September 18, 2026, at 1:00 p.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address as before. Once again, "Andrea Mason" signed for the certified letter, on August 15, 2026; and the first-class mailed 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 above 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 September 18, 2026, hearing to argue

against its dismissal) since the filing of his Form AR-C on September 12, 2025. Thus, the evidence preponderates that dismissal is warranted under the above provision. Because of this, the issue regarding the application § 11-9-702(a)(4) & (d) 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). 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. 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 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).