

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H204854**

TONI L. DICKERSON, EMPLOYEE	CLAIMANT
ROCK REGION METRO, SELF-INSURED EMPLOYER	RESPONDENT
RISK MGMT. RESOURCES, THIRD-PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 31, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 31, 2023, 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 second Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on August 31, 2023, in Little Rock, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Ms. Melissa Wood, Attorney at Law, of Little Rock, Arkansas. The record consists of Respondents' Exhibit 1, pleadings, forms and correspondence related to the claim, consisting of one index page and eleven numbered pages thereafter. In addition, without objection, the Commission's file has been incorporated herein in its entirety by reference.

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The evidence reflects that per the First Report of Injury or Illness filed on July 8, 2022, Claimant purportedly suffered an injury at work on April 12, 2022, when she experienced pain and tingling in her left fingertips and upper extremity. According to the Form AR-2 that was filed on July 8, 2022, Respondents controverted the claim in its entirety.

On July 6, 2022, Claimant filed a Form AR-C, requesting a range of initial and additional benefits, and stated that the alleged accident happened on April 15, 2022, when the bus she was operating drove into a “utility cut.” Claimant requested a change of physician the same day that she filed the Form AR-C. But this was denied by the Commission on July 19, 2022, because the claim had been controverted.

No further action on the claim took place until March 1, 2023. On that date, Respondents filed the first Motion to Dismiss. Therein, they argued that dismissal was warranted under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13 because “Claimant has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” On March 20, 2023, my office wrote Claimant, asking for a response to the motion within twenty (20) days. This correspondence was sent by first-class and certified mail to the address for her listed in the file and on her Form AR-C. While the U.S. Postal Service had no record regarding whether Claimant signed for the certified letter, the first-class letter was not returned. Nonetheless, no response was forthcoming from her. Claimant’s testimony at the June 1, 2023,

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hearing on this motion was that while she received this letter in its first-class form, she never claimed the certified letter. She added that her depression, caused by an acrimonious divorce, led her not to open her mail for some time. Nevertheless, while she admitted that she read this correspondence—albeit belatedly—she never wrote the Commission to object to a dismissal. Based on the totality of the evidence, I issued an opinion on June 1, 2023, denying the first Motion to Dismiss and beginning the prehearing process.

Prehearing questionnaires were issued to the parties on June 8, 2023. Respondents filed their response thereto that same day, and Claimant followed suit on June 22, 2023. My office initiated contact with the parties on July 11, 2023, attempting to schedule a prehearing telephone conference. After numerous exchanges among the parties on this matter, Claimant replied on July 20, 2023, the following:

Hello everyone well I've spoken with 2 Attorneys and they both informed me that I can not sue for pain and suffering dealing with Workers Compensation! So I've decided to drop this case because the lawmakers have prevented me from winning such a case. Thanks for giving me a second chance without dismissing my case earlier!

(Sic)

Based upon this communication, Respondents on July 21, 2023, filed a second Motion to Dismiss, grounding it solely in Rule 13. Claimant was not asked to respond thereto, since it was she who initiated the process in this instance. A hearing was scheduled for August 31, 2023, at 9:30 a.m. at the

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Commission in Little Rock. As before, the Notice of Hearing was sent to Claimant (using the same address as before, which Claimant in the first hearing confirmed) by certified and first-class mail. In this instance, the certified letter was returned, unclaimed, on August 23, 2023; but the first-class letter was not. The evidence thus preponderates that she received notice of the hearing.

The hearing on the second Motion to Dismiss proceeded as scheduled on August 31, 2023. Again, Claimant failed to appear. Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authority.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, 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 second Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute her claim under AWCC R. 099.13.
4. Respondents' second Motion to Dismiss should be, and hereby is, granted.
5. This claim is hereby dismissed *without prejudice*.

III. DISCUSSION

AWCC 099.13 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). (Emphasis added)

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 this 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 second Motion to Dismiss and of the hearing thereon; and (2) Claimant has failed to pursue her claim because she has taken no further action in pursuit of it—including appearing at the August 31, 2023, hearing to argue against its dismissal—since the June 23, 2023, filing of her prehearing questionnaire response. More importantly, she clearly communicated on July 20, 2023, that she no longer wishes to pursue the claim. Thus, the evidence preponderates that dismissal is warranted under Rule 13.

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). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *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 above authorities, I agree and find that the dismissal of the 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.

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).