

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H202452**

JORDAN DODSON, EMPLOYEE	CLAIMANT
OZARK PIZZA CO., LLC, EMPLOYER	RESPONDENT
INTREPID INS. CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 21, 2023

Hearing before Administrative Law Judge O. Milton Fine II on February 17, 2023, 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 a Motion to Dismiss by Respondents. A hearing on the motion was conducted on February 17, 2023, 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. Without objection, the Commission file on this claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1, forms, pleadings and correspondence related to the claim, consisting of nine pages.

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The record reflects the following procedural history:

On March 28, 2022, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to her ankle at work on March 15, 2022. On May 12, 2022, Respondents filed a Form AR-2, representing that they had accepted the injury as compensable and were paying medical and indemnity benefits pursuant thereto. Claimant has not filed a Form AR-C. However, she sent the following to the Commission on April 18, 2022:

I Jordan Dodson am Requesting an appeal for additional Benifits.
The Amount in Qustion is less than 2,5000, And I know Mediation is
mandatory. Claim #H202452
/s/ Jordan Dodson 4-18-22 [sic]

An attempt to set up a legal advisor conference failed. For that reason, this case was assigned to then-Administrative Law Judge Terry Don Lucy on May 11, 2022. Prehearing questionnaires were issued to the parties on May 12, 2022. Respondents' counsel entered her appearance before the Commission on May 13, 2022; and her clients returned an executed Preliminary Notice on May 16, 2022. Because Claimant did not file either a Preliminary Notice or a prehearing questionnaire response, Judge Lucy on June 9, 2022, returned the file to the Commission's general files.

No further action on this claim took place until October 31, 2022, when Respondents filed the instant Motion to Dismiss. Therein, they argued that over six months had elapsed since Claimant requested a hearing without her taking any other action in pursuit of this claim. They asserted that dismissal was called

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for under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012). The Commission on November 2, 2022, wrote Claimant, asking for a response to the motion within twenty (20) days. The letter was sent via certified and first-class mail to the address for Claimant listed in the file. She signed for the certified letter on November 7, 2022; and the first-class correspondence was not returned. Nonetheless, no response to the motion was forthcoming from her.

On January 4, 2023, a hearing on the Motion to Dismiss was scheduled for February 17, 2023, at 12:00 p.m. at the Craighead County Courthouse Annex Building in Jonesboro. The notice was sent to Claimant by first-class and certified mail at the same address as before. In this instance, the certified letter was claimed by Claimant on January 11, 2023; and as before, the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled on February 17, 2023. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authorities.

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):

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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 her claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; the claim is hereby dismissed *without prejudice* under AWCC R. 099.13.

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) In turn, §§ 11-9-702(a)(4) & (d) read:

(4) If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

...

(d) If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling

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of the claim within limitation period specified in subsection (b) of this section.

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” 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).

No Form AR-C has been filed in this case. That is the means for filing a “formal claim.” See *Yearwood v. Wal-Mart Stores, Inc.*, 2003 AR Wrk. Comp. LEXIS 739, Claim No. F201311 (Full Commission Opinion filed June 17, 2003). See also *Sinclair v. Magnolia Hospital*, 1998 AR Wrk. Comp. LEXIS 786, Claim No. E703502 (Full Commission Opinion filed December 22, 1998)(a claim is “typically” filed *via* a Form AR-C). While a Form AR-1 was filed, that does not suffice to instigate a claim. *Id.*

Per Ark. Code Ann. § 11-9-702(c) (Repl. 2012):

A claim for additional compensation must **specifically** state that it is a claim for additional compensation. Documents which do not **specifically** request additional benefits shall not be considered a claim for additional compensation.

(Emphasis added) See *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640.

My review of the Commission’s file discloses one document sufficient to constitute a filing of a claim for additional benefits under the standard cited above.

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That document is Claimant's April 18, 2022, hearing request, "[r]equesting an appeal for additional [b]en[e]fits."

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 her claim because she has taken no further action in pursuit of it (including appearing at the February 17, 2023, hearing to argue against its dismissal) since the filing of her hearing request. 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). 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 with

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prejudice. But based on the above authorities, I 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.

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).