

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. G902824**

<b>FREDI E. ESPINOSA, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ITNOLAP PALLET &amp; CRATING, LLC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>BRIDGEFIELD CASUALTY INS. CO., CARRIER</b>	<b>RESPONDENT</b>
<b>SUMMIT CONSULTING, LLC., THIRD PARTY ADMINISTRATOR</b>	<b>RESPONDENT</b>

**OPINION FILED JUNE 20, 2022**

Hearing before Administrative Law Judge O. Milton Fine II on June 17, 2022, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.<sup>1</sup>

Respondents represented by Mr. Jason Ryburn, 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 June 17, 2022, 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. At Respondents' request, the Commission's file on the claim has been incorporated herein in its entirety by reference.

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<sup>1</sup>Because Claimant is a Spanish-speaking individual, Certified Spanish Language Interpreter Shannon Tanner was on hand to serve as the interpreter for

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The record reflects the following procedural history:

Per the First Report of Injury or Illness filed May 2, 2019, Claimant purportedly injured the small finger of his left hand when it was struck by a running saw. According to the Form AR-2 that was filed on that same day, Respondents accepted this injury as compensable and paid medical and indemnity benefits pursuant thereto.

Through then-counsel Kolton Jones, Claimant filed a Form AR-C on November 27, 2019, asking for the full range of initial and additional benefits and alleging that he injured “his left hand, left fingers and other whole body” at work. Respondents’ counsel entered his appearance before the Commission on October 26, 2020. No hearing request accompanied this filing.

On May 4, 2020, Jones’s co-counsel, Laura Beth York moved to withdraw their firm from the case. In an order entered on May 20, 2020, the Full Commission granted the motion.

Nothing further occurred on this matter until Respondents filed the initial Motion to Dismiss on June 1, 2020. The file was assigned to my predecessor, Chief Administrative Judge Barbara Webb. She wrote Claimant on June 11, 2020, asking for a response to the motion within 20 days. Because no response to the motion was forthcoming, Judge Webb on July 6, 2020, scheduled a hearing on the motion for August 7, 2020, in Jonesboro. Following that hearing, which

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the proceeding. But because Claimant failed to appear, Ms. Tanner’s services were not utilized.

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Administrative Law Judge Chandra Black conducted on September 4, 2020, Judge Black handed down an opinion denying the Motion to Dismiss. On September 21, 2020, Claimant filed another Form AR-C, in which he requested permanent partial disability benefits. In response, Respondent third party administrator sent the Commission a letter on September 23, 2020, confirming that the respondents had accepted the claim as compensable.

Prehearing questionnaires were issued to the parties on September 9, 2020. However, because Claimant failed to file a response thereto, Judge Webb on October 12, 2020, returned the file to the Commission's general files.

The record reflects that nothing further took place on the claim until April 28, 2022. On that date, Respondents filed the instant Motion to Dismiss. Therein, they alleged that "[n]o efforts to prosecute the claim have been made," and asked that it be dismissed without prejudice. On April 29, 2022, 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 Cash, Arkansas address of Claimant listed in the file and on his Form AR-C. "Ignacio" signed for the certified letter on May 4, 2022; and the first-class letter was not returned to the Commission. Nonetheless, no response to the Motion to Dismiss was forthcoming. On May 19, 2022, I scheduled a hearing on the motion for June 17, 2022, at 11:00 a.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, the certified letter was returned to the Commission, unclaimed, on June 13, 2022. But

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the first-class letter was not returned. The evidence thus preponderates that Claimant received this correspondence.

The hearing on the Motion to Dismiss proceeded as scheduled on June 17, 2022. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the aforementioned 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 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 R. 099.13 reads:

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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 June 17, 2022, hearing to argue against its dismissal) since the filing of his Form AR-C on September 21, 2020. 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(d).

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

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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)). At the hearing, Respondents requested 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*.<sup>2</sup>

#### **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

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<sup>2</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).