

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H307308**

<b>MICHAEL R. ECTON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>APEX TOOL GROUP LLC, EMPLOYER</b>	<b>RESPONDENT</b>
<b>TRUMBULL INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 23, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on January 17, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Zachary F. Ryburn, 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 January 17, 2025, 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. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence and forms 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 38

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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 reflects the following procedural history:

Per the First Report of Injury or Illness filed on November 8, 2023, Claimant purportedly suffered an injury to his right index finger at work on November 2, 2023, while he was operating a brake press. According to the Form AR-2 that was filed on November 16, 2021, Respondents controverted the claim on the basis that the Claimant allegedly tested positive for the presence of illegal drugs in his system.

On November 14, 2023, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C. Therein, he alleged that he was entitled to the full range of initial benefits as a result of the partial amputation of his finger. Respondents emailed the Commission on November 17, 2023, reiterating their position.

The file was assigned to me on February 12, 2024, to conduct a full hearing. Prehearing questionnaires were issued to the parties on that same date. Claimant filed a timely response thereto on March 3, 2024; and Respondents followed suit on March 4, 2024. On June 10, 2024,<sup>1</sup> my office scheduled a

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<sup>1</sup>As reflected in the evidentiary record, my office mis-diaried this matter. The prehearing telephone conference was promptly scheduled after this oversight was brought to the attention of my office by Claimant's attorney.

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prehearing telephone conference for July 1, 2024. At that conference, a hearing was scheduled for September 20, 2024, in Jonesboro concerning the following issues:

1. Whether Claimant sustained a compensable injury to his right first finger by specific incident.
2. Whether Claimant is entitled to reasonable and necessary treatment of his alleged compensable injury.
3. Whether Claimant is entitled to temporary total disability benefits from November 3, 2023, to a date yet to be determined.
4. Whether Claimant is entitled to a controverted attorney's fee.

However, on August 17, 2024, Peoples emailed my office: "Claimant hereby withdraws his hearing request. Please cancel the scheduled hearing and return the claim to general files." On August 19, 2024, this request was granted.

However, while the file was still in my office, on August 20, 2024, Peoples moved to withdraw from the case. Claimant was sent a letter that same day via certified and first-class mail letter to the Jonesboro address of Claimant listed in the file and his Form AR-C, requesting that he respond to the motion within 20 days. However, while the certified letter was returned to the Commission, unclaimed, on September 17, 2024, the first-class letter was not. Claimant did not respond to the letter to object to Peoples's withdrawal, so I entered an Order on September 18, 2024, granting the motion under AWCC Advisory 2003-2.

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On October 4, 2024, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13. My office wrote Claimant on October 9, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the same Jonesboro address of Claimant as before. While the United States Postal Service was unable to verify whether Claimant claimed the certified letter, the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On October 30, 2024, a hearing on the Motion to Dismiss was scheduled for December 20, 2023, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. On December 5, 2024, the hearing was re-set for January 17, 2025, at 12:00 p.m. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address as before. Once again, the certified letter was returned to the Commission unclaimed, on January 7, 2025; but the first-class letter was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on January 17, 2025. 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

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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; this claim for initial benefits is hereby dismissed without prejudice under AWCC R. 099.13.

### **III. DISCUSSION**

AWCC R. 099.13 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

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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 January 17, 2024, hearing to argue against its dismissal) since the withdrawal of his hearing request on August 17, 2024. 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). 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*.<sup>2</sup>

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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).

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**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