

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. G807509**

**RONALD FORD, EMPLOYEE**

**CLAIMANT**

**COLSON CASTER CORP,  
EMPLOYER**

**RESPONDENT**

**TRAVELERS INDEMNITY CO. OF CT,  
CARRIER**

**RESPONDENT**

**OPINION FILED APRIL 20, 2021**

Hearing before Administrative Law Judge O. Milton Fine II on April 2, 2021 in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, Attorneys at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on Respondents' motion to dismiss. The record consists of Commission Exhibit 1, the November 20, 2020 prehearing order, consisting of seven number pages; and Respondents' Exhibit 1, a compilation of Claimant's medical records, consisting of three index pages and 215 numbered pages thereafter. In addition, without objection, I have incorporated the file herein in its entirety by reference.

This matter was set for hearing on the merits of the claim for April 2, 2021, at 9:30 a.m. at the Craighead County Courthouse in Jonesboro, Arkansas. The following issues were to have been litigated:

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1. Whether Claimant sustained a compensable injury to his back by specific incident.
2. When did Claimant provide notice of his alleged back injury?
3. Whether Claimant is entitled to reasonable and necessary medical treatment.
4. Whether Claimant is entitled to temporary total disability benefits.

All other issues were reserved. Claimant appeared on the November 17, 2020 prehearing telephone conference call and confirmed that the Commission had his correct address. He was to testify at the hearing. While the hearing was originally scheduled for February 19, 2021, it was rescheduled for April 2, 2021. Claimant was sent a letter by first-class mail on January 22, 2021, notifying him of this change. The letter, sent to the address that he confirmed was accurate during the prehearing telephone conference, was not returned. The evidence thus preponderates that he received notice of the hearing on his claim.

However, at the appointed time for the hearing, Claimant did not appear. I attempted to contact Claimant by phone, using the number I used to reach him for the prehearing telephone conference. But I received an automated message that stated that the call could not be completed. I opened the record at 10:01 a.m.—over 30 minutes after the hearing was scheduled to begin—to make note of his failure to appear and to hear from Respondents.

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Respondents renewed their motion for a dismissal of the claim pursuant to A.W.C.C. R. 099.13, and pointed out that the hearing was being held in the same location as the August 7, 2020 hearing on the motion to dismiss. Claimant appeared at that hearing. The motion to dismiss was taken under advisement.

Following the hearing, I wrote Claimant on April 5, 2021 and gave him until April 19, 2021 to file with the Commission a response that explains his failure to appear at the hearing. This letter was sent to him by both certified and first-class mail. An “A. Lockhart” signed for the certified letter on April 7, 2021, and the first-class letter was not returned. The evidence thus preponderates that he was served with it. However, no response from him was forthcoming within the allotted time.

Instead, in a letter addressed to Respondents’ counsel (and furnished to the Commission) and not received by either until April 20, 2021, Claimant wrote:

Dear Mr. Guy Alton Wade

My father took sick he’s in Freeport Memorial Hospital. His kidneys are bad that was the reason why I wasn’t there plus I thought i[t] was in May if you would please reschedule . I was trying to make it up there and my car broke down in Springfield Illinois. I am going th[r]ough a whole lot of pain.

Per the letter, Claimant’s telephone number has changed.

## **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 claim.
2. Claimant was provided reasonable notice of the April 2, 2021 hearing, at which the motion to dismiss was heard.
3. The evidence preponderates that Claimant has failed to prosecute his claim.
4. Dismissal of this claim *without prejudice* is warranted under AWCC R. 099.13.
5. This 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). In turn, Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) reads:

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.

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(Emphasis added) 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).

As shown by the evidence, Claimant without good cause failed to appear at the merits hearing on this claim, where he was to have testified. In his letter, he first represents that the reason for his non-appearance was that he was en route to visit his ill father out-of-state when his car broke down. But curiously, he then states that he thought that the hearing “was in May”—which not only makes his first reason irrelevant, but makes no sense in light of the letter from my office that rescheduled it for April 2, 2021. He received notice of this hearing from the Commission. The evidence thus shows that Claimant has failed to prosecute his claim, and that reasonable notice of the proceeding was provided to him. Since that time, no evidence has been brought to the attention of the Commission that would excuse his failure to appear at his own hearing. Hence, dismissal of the instant claim is justified under Rule 13. Respondents’ motion to dismiss is hereby granted.

That leaves the question of whether the dismissal should be with or without prejudice. The Commission possesses the authority to dismiss claims

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with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). This includes claims dismissed under Rule 13. *Johnson*, 55 Ark. App. 83, 929 S.W.2d 730. In *Abo v. Kawneer Co.*, 2005 AWCC 226, 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)). Based upon the foregoing, this claim should be and is hereby dismissed *without prejudice*.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge