

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H302088**

DAVID M. FULK, EMPLOYEE	CLAIMANT
SHEARERS FOODS LLC, EMPLOYER	RESPONDENT
TRAVELERS INDEMN. CO., CARRIER	RESPONDENT

OPINION FILED MAY 3, 2024

Hearing before Administrative Law Judge O. Milton Fine II on May 3, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Amy C. Markham, 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 May 3, 2024, 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 without objection was Commission Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 25 pages.

The record reveals the following procedural history:

The First Report of Injury or Illness, filed on March 31, 2023, reflects that Claimant purportedly suffered an injury to his skull as a result of a fall at work on

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February 3, 2023. Per the Form AR-2 filed on March 31, 2023, Respondents controverted the claim in its entirety.

On March 29, 2023, Claimant filed a Form AR-C, alleging that he was entitled to initial and additional benefits for his alleged work-related injuries. He elaborated that his fall at work was due to a seizure, and that although “the cause of the seizure is unknown, [it] could have been cause[d] by chemicals in the plant.” After an attempt to set up a Legal Advisor conference with the parties failed, the file was assigned to me on June 29, 2023, to conduct a hearing on the merits of the claim. Prehearing questionnaires were issued to the parties on July 13, 2023. However, Claimant’s questionnaire was returned because the address to which it was sent was incorrect (despite the fact that it was the address he listed on his Form AR-C). The questionnaire was re-sent to the new address supplied by him. Respondents’ counsel entered her appearance on August 10, 2023, and confirmed that her clients were still controverting the claim in its entirety. While Respondents filed a timely response to the questionnaire on August 17 and September 27, 2023, Claimant failed to do so, despite being given an extension until August 14, 2023. For that reason, the file was returned to the Commission’s general files on September 28, 2023.

The record reflects that no further action was taken on the case until February 15, 2024, when Respondents filed the instant Motion to Dismiss, contending that “[t]here has been no bona fide request for a hearing within the past six months.” On February 21, 2024, my office wrote Claimant, requesting a

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response to the motion within 20 days. This correspondence was sent by both certified and first-class mail to the Jonesboro address for Claimant that he supplied to my office. The certified letter was returned to the Commission, undelivered, on March 29, 2024; but the first-class correspondence was not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

On March 14, 2024, a hearing on Respondents' motion was scheduled for May 3, 2024, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. Yet again, while the certified letter was returned—on April 22, 2024—the first-class letter was not returned.

The hearing proceeded as scheduled on May 3, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under Ark. Code Ann § 11-9-702(a)(4) (Repl. 2012) and AWCC R. 099.13.

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 claim.

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2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Claimant has failed to prosecute his claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.
5. The claim is hereby dismissed *without prejudice*.

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)(discussing, *inter alia*, Rule 13).

The evidence adduced at the hearing shows that Claimant has taken no action in pursuit of his claim since the filing of his Form AR-C on March 29, 2023. Moreover, he failed to appear on the hearing to argue against dismissal of the claim, despite the evidence showing that both he and Respondents were provided reasonable notice of the Motion to Dismiss and of the hearing thereon. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the applicability of Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

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

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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*.¹

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).