

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H000114

ROSE M. GORDON, EMPLOYEE	CLAIMANT
CARLISLE SCHOOL DIST., SELF-INSURED EMPLOYER	RESPONDENT
ARK. SCHOOL BOARDS ASSN., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 4, 2022

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 4, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss that was filed by Respondents. A hearing on the motion was conducted on August 4, 2022, in Little Rock, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Mr. Jarrod Parrish, Attorney at Law, of Little Rock, Arkansas. The record consists of Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of one index page and nine numbered pages thereafter. In addition, the Commission's file has been incorporated herein in its entirety by reference.

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The evidence reflects that per the First Report of Injury or Illness filed on January 8, 2020, Claimant purportedly injured her lower back on November 5, 2014, when she was lifting a box at work. According to the Form AR-2 that was filed on August 20, 2021, Respondents controverted the matter. Claimant filed a Form AR-C, on January 8, 2020. She indicated on the form that she was seeking only medical expenses.

On June 10, 2022, Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal was warranted under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012) because “Claimant has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” The case was assigned to me on June 8, 2022; and on June 9, 2022, my office wrote Claimant, requested a response to the motion within 20 days. The letter was sent by first-class and certified mail to the address listed by Claimant in her Form AR-C. She signed for the certified letter on June 11, 2022; and the first-class letter was not returned to the Commission. Regardless, no response to the motion was forthcoming. On June 22, 2022, a hearing on the motion was scheduled for August 4, 2022, at 9:30 a.m. at the Commission in Little Rock. 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 her on June 25, 2022; and the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

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The hearing on the Motion to Dismiss proceeded as scheduled on August 4, 2022. Again, Claimant failed to appear. But she did send a handwritten letter to Respondents' counsel on August 2, 2022, that reads:

I Rose Gordon, Wish to Dismissed [sic] this lawsuit with Carlisle School District

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Thank you
Rose Gordon
August 2, 2022

Respondents appeared through counsel at the hearing 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):

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 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.

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 this matter—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 her claim because she has taken no further action in pursuit of it (including appearing at the August 4, 2022, hearing to argue against its dismissal) since the filing of her Form AR-C on January 8, 2020. Moreover, she has stated that she has no wish to pursue her claim any further. 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 without prejudice. Based on the above authorities, I agree and 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).