

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. 405484**

BRIANNA GATEWOOD, EMPLOYEE	CLAIMANT
FAMILY DOLLAR STORES, INC., EMPLOYER	RESPONDENT
SAFETY NATIONAL CASUALTY CORP., CARRIER	RESPONDENT

OPINION FILED OCTOBER 3, 2025

Hearing before Administrative Law Judge O. Milton Fine II on October 3, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas (neither appearing).

Respondents represented by Ms. Carol Lockard Worley, Worley, Wood & Parrish, Attorneys 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 October 3, 2025, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant and her counsel waived their appearance. Admitted into evidence were Commission Exhibit 1 (see 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 Respondents’ Exhibit 1, forms, pleadings, and correspondence related to this claim, totaling 15 and 11 pages, respectively.

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The record shows the following procedural history:

Per the First Report of Injury or Illness filed on August 26, 2024, Claimant purportedly suffered an injury to her ankle at work on August 13, 2024, when she was operating an electric motor hand truck and suffered a mishap. According to the Form AR-2 that was filed August 27, 2024, Respondents accepted the claim as compensable and paid medical plus indemnity benefits pursuant thereto.

On March 18, 2025, through counsel, Claimant filed a Form AR-C. Therein, she alleged that she injured her right leg and ankle in the aforementioned accident, and requested the full range of initial benefits. In correspondence accompanying the filing, Claimant's counsel wrote: "I am not asking for a hearing at this time." Respondents' counsel entered her appearance on March 20, 2025; and in an email to the Commission on March 28, 2025, she reiterated the position that her clients had taken in the Form AR-2.

The record reflects that nothing further took place on the claim until September 23, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under 11 C.A.R. § 25-110(d) (formerly 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 [Arkansas] Workers' Compensation Commission over the last six months." The file was assigned to me on September 25, 2025; and on September 26, 2025, my office wrote Claimant and her counsel, asking for a response to the motion within 20 days. Her counsel

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responded via email that same day: “Claimant will not oppose dismissal provided it is without prejudice. We will ask to be excused from any hearing on the motion.” Based on this, a Notice of Hearing was issued that same day, setting the hearing for October 3, 2025, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. On October 1, 2025, I emailed the parties, asking if anyone objected to my delaying the beginning of the hearing until just before noon that same day. Both sides indicated no objection, with Claimant’s counsel repeating that they would not be coming to the hearing.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the foregoing 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.

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3. The evidence preponderates that Claimant has failed to prosecute her claim under 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim for additional benefits is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

III. DISCUSSION

11 C.A.R. § 25-110(d) 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 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

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in pursuit of it (including appearing in person and/or through counsel at the October 3, 2025, hearing to argue against its dismissal) since the filing of her Form AR-C on March 18, 2025. Thus, the evidence preponderates that dismissal is warranted under § 25-110(d). Because of this finding, the argument made under Ark. Code Ann. § 11-9-702 (Repl. 2012) will not be addressed.

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. Based on the foregoing, 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 for additional benefits 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).