

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H502464**

SALVADOR GONZALES, EMPLOYEE

CLAIMANT

**ALL SEASONS ROOFING CO.,
EMPLOYER**

RESPONDENT

**TRANSPORATION INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED FEBRUARY 5, 2026

Hearing before Administrative Law Judge O. Milton Fine II on February 5, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Lee J. Muldrow, 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 February 5, 2026, in Little Rock, 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 Commission Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of 21 pages. 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”).

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The record reflects the following procedural history:

Per the initial and amended First Reports of Injury or Illness, filed on April 29 and May 2, 2025, respectively, Claimant purportedly suffered an injury to his foot at work on March 30, 2025. According to the Form AR-2 that was filed on May 5, 2025, Respondents controverted the claim in its entirety.

On April 22, 2025, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C. Therein, he alleged that his client injured his right foot in a “work accident” that allegedly took place on March 20, 2025. The boxes on the form were checked to indicate that Claimant was seeking all manner of initial benefits. In an email accompanying this filing, Peoples stated that he was “not asking for a hearing at this time.” In correspondence to the Commission received on May 2, 2025, Respondents reiterated that they were controverting the claim. Respondents’ counsel entered his appearance before the Commission on May 7, 2025.

In an email to the Commission sent on August 27, 2025, Respondents stated that the claim had been settled. A joint petition was filed. However, because the University of Arkansas for Medical Sciences requested payment for their treatment of Claimant, and agreement among the parties could not be reached to provide for this, the joint petition was withdrawn. The file was returned to the Commission’s general files on September 29, 2025. On October 20, 2025, Peoples moved to withdraw from the case. In an Order entered on November 19, 2025, the Full Commission granted the motion under AWCC Advisory 2003-2.

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The record reflects that nothing further took place on the claim until November 25, 2025. On that date, Respondents filed the instant motion and brief in support thereof, asking for dismissal of the claim under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) due to Claimant's alleged failure to, inter alia, make a bona fide hearing request within six months of the filing of the Form AR-C. The file was assigned to me on December 1, 2025; and on December 2, 2025, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by certified and first-class mail to the Little Rock, Arkansas address of Claimant listed in the file and on his Form AR-C. The certified letter was returned to the Commission, unclaimed, on January 2, 2026; but the first-class mailing was not returned. However, no response from him to the motion was forthcoming. On December 31, 2025, a hearing on the Motion to Dismiss was scheduled for February 5, 2026, at 12:00 p.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address in Little Rock as before. In this instance, the certified letter was claimed on January 7, 2026, by someone with an illegible signature; and as before, the one sent by first-class mail was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on February 5, 2026. 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 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 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim 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

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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 February 5, 2026, hearing to argue against its dismissal) since his file was returned to the Commission's general files on September 29, 2025. Thus, the evidence preponderates that dismissal is warranted under § 25-110(d). Because of this finding, it is unnecessary to address the application 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 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

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).

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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.

O. MILTON FINE II
Chief Administrative Law Judge