

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H005904**

BARBARA J. GRANT, EMPLOYEE	CLAIMANT
BAPTIST HEALTH, SELF-INSURED EMPLOYER	RESPONDENT
XL INS. AMERICA, CARRIER	RESPONDENT

OPINION FILED MAY 21, 2026

Hearing before Administrative Law Judge O. Milton Fine II on May 20, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Melissa Wood, 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 20, 2026, in Little Rock, Pulaski County, 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 Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of one index page and 21 numbered pages thereafter. In addition, in order to address adequately this matter under 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 without objection, I have blue-backed to the record documents from the Commission's file

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on the claim, consisting of four pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

The record reflects the following procedural history. Claimant, through then-counsel Daniel Wren, filed a Form AR-C on July 15, 2022. Therein, she requested the full range of initial and additional benefits and alleged that she sustained compensable injuries on August 7, 2020, when she “slipped and did a shuffle dance, twisted/felt pain in back and right hip to mid thigh.” On June 26, 2024, the first hearing was held on this claim before Administrative Law Judge JayO. Howe. Judge Howe’s September 24, 2024, opinion contains the following Findings of Fact and Conclusions of Law:

1. The AWCC has jurisdiction of this claim.
2. The previously noted stipulations are accepted as fact[:]
 - a. The AWCC has jurisdiction over this claim.
 - b. The employee/employer/TPA relation existed at all relevant times.
 - c. The claimant sustained a compensable work injury on 8 August 2020, that was accepted as compensable and has received some benefits, accordingly, on the claim.]
3. The claimant failed to prove by a preponderance of the evidence that she is entitled to additional treatment in the form of additional MRI studies of her pelvis.

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This decision was not appealed. It is thus binding on this proceeding under the Law of the Case Doctrine and is *res judicata*. See *Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994).

Wren moved to withdraw from his representation of Claimant on February 21, 2026. In an Order entered on March 25, 2026, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2.

The record reflects that no further action was taken on this case until March 30, 2026. On that date, Respondents filed the instant Motion to Dismiss, under 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702 (Repl. 2012), asking for dismissal of the claim because Claimant “has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” The file was reassigned to Judge Howe on March 31, 2026. His office wrote Claimant that same day, asking for a response to the motion to dismiss within twenty (20) days. The correspondence was sent by certified and first-class mail to the address for Claimant listed in the file and on her Form AR-C. The certified letter was returned to the Commission, undelivered, on May 4, 2026; but the first-class letter was not returned. Regardless, no response to the motion was forthcoming. On April 22, 2026, a hearing on the Motion to Dismiss was scheduled for May 20, 2026, at 10:00 a.m. at the Commission in Little Rock. The certified mailing of the Notice of Hearing to Claimant was unclaimed by Claimant and per the United

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States Postal Service, is being returned; but as before, the first-class mailing of the same document was not returned.

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 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 claim.
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 instant 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).

11 C.A.R. § 25-110(d) (formerly 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).

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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 steps to pursue it (including appearing at the May 20, 2026, hearing to argue against its dismissal) since Judge Howe's decision was handed down on September 24, 2024. Thus, the evidence preponderates that dismissal of the claim is warranted under 11 C.A.R. § 25-110(d). Because of this finding, the applicability of § 11-9-702 is moot and 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

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