

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H304059**

ADAM B. GRIFFIN, EMPLOYEE	CLAIMANT
PPG INDUSTRIES., EMPLOYER	RESPONDENT
SENTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED MARCH 1, 2024

Hearing before Administrative Law Judge O. Milton Fine II on February 29, 2024, 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 by Respondents. A hearing on the motion was conducted on February 29, 2024, 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 Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of one index page and eight numbered pages thereafter. Also, 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

GRIFFIN – H304059

on the claim, consisting of two pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on July 13, 2023, Claimant purportedly suffered injuries to multiple body parts at work on June 16, 2023, when he was involved in an incident involving a forklift. According to the Form AR-2 that was also filed on July 13, 2023, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On June 26, 2023, Claimant filed a Form AR-C. Therein, he alleged that he was entitled to the full range of initial and additional benefits as a result of the compensable injuries that he allegedly sustained. No hearing request accompanied this filing.

On October 25, 2023, Tanner Thomas moved to withdraw from his representation of Claimant. In an order entered on November 17, 2023, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until January 3, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). My office wrote Claimant on January 3, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail

GRIFFIN – H304059

to the Little Rock address of Claimant listed in the file and on his Form AR-C. While the certified letter was returned to the Commission, unclaimed, on February 8, 2024, the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On January 29, 2024, a hearing on the Motion to Dismiss was scheduled for February 29, 2024, at 12:00 p.m. at the Commission in Little Rock. The notice was sent to Claimant via first-class and certified mail to the same address as before. While, it could not be verified whether Claimant signed for the certified letter, the first-class letter was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on February 29, 2024. 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.

GRIFFIN – H304059

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 AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this claim for additional benefits is hereby dismissed without prejudice under AWCC R. 099.13.

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).

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 his claim because he has taken no further action in pursuit of it (including appearing at the February 29, 2024, hearing to argue against its dismissal) since the filing of his Form AR-C on June 26, 2023. 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). 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

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*.

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).

GRIFFIN – H304059

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge