BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H501116

STEPHEN GRIGGS, EMPLOYEE	**CLAIMANT**
SMS GROUP, INC., **EMPLOYER**	**RESPONDENT**
FARMINGTON CASUALTY CO., **CARRIER**	**RESPONDENT**

OPINION FILED NOVEMBER 14, 2025

Hearing before Administrative Law Judge O. Milton Fine II on November 14, 2025, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Amy C. Markham, 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 November 14, 2025, in Forrest City, 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 (*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"), forms, pleadings, and correspondence related to this claim, consisting of 19 pages.

The record shows the following procedural history:

Per the First Report of Injury or Illness that was filed on February 20, 2025, 2025, Claimant purportedly suffered an injury to his lower back at work on December 24, 2024, when he was lifting and sorting large and heavy braided hoses. According to the Form AR-2 that was filed on February 20, 2025, Respondents controverted the claim in its entirety. Their counsel entered her appearance on February 22, 2025.

On February 28, 2025, through then-counsel Laura Beth York, Claimant filed a Form AR-C. Therein, he requested the full range of additional benefits in connection with his alleged lower back injury. No hearing request accompanied this filing. In response thereto, Respondents' counsel notified the Commission by letter on March 7, 2025, that her clients' position had not changed.

York moved to withdraw from her representation of Claimant on June 26, 2025. In an Order entered on July 23, 2025, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until September 2, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim dismissal under AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)) because Claimant had not made a bona fide hearing request on the claim since its filing. The file was assigned to me on September 3, 2025; and on that same date, my office wrote Claimant, asking for a response to the

motion within 20 days. The letter was sent by first class and certified mail to the Cherry Valley address for Claimant that was listed in the file and on his Form AR-C. Someone with an illegible signature signed for the certified letter on September 6, 2025; and the first-class letter was not returned. Regardless, no response to the motion was forthcoming. On September 25, 2025, a hearing on the Motion to Dismiss was scheduled for November 14, 2025, at 10:30 a.m. at the St. Francis County Courthouse in Forrest City. The certified mailing of the Notice of Hearing to Claimant was returned to the Commission, refused, on October 3, 2025; but the first-class mailing 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 the above-cited provision.

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) (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).

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 steps to pursue it (including appearing at the November 14, 2025, hearing to argue against its

dismissal) since the filing of his Form AR-C on February 28, 2025. Thus, the evidence preponderates that dismissal of the claim is warranted under 11 C.A.R. § 25-110(d).

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 initial benefits is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

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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).