

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H008820

RENETA HENLEY, EMPLOYEE	CLAIMANT
LONOKE SCHOOL DIST., SELF-INSURED EMPLOYER	RESPONDENT
ARK. SCHOOL BOARDS. ASSN, THIRD-PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 27, 2021

Hearing before Chief Administrative Law Judge O. Milton Fine II on August 26, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a motion to dismiss filed by Respondents. A hearing on the motion was conducted on August 26, 2021, in Little Rock, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Mr. Guy Alton Wade, Attorney at Law, of Little Rock, Arkansas. The record consists of Respondents' Exhibit 1, orders, pleadings and correspondence related to the claim, consisting of ten (10) numbered pages. In addition, the Commission's file has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on November 9, 2020, Claimant purportedly injured her right arm and leg on

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October 22, 2020, while walking through a doorway at work with her lunch. According to the Form AR-2 that was filed the same day, Respondents accepted the claim as compensable and paid medical and indemnity benefits pursuant thereto.

On November 6, 2020, Claimant (through then-counsel Whitney James) filed a Form AR-C, asking for a full range of initial and additional benefits. Claimant alleged therein that she injured not only her right leg, but also her right ankle and shoulder, her left leg and knee, and her “other whole body.” On November 17, 2020, James filed a prehearing questionnaire response. This led to the assignment of the file to my office on November 18, 2020. That same day, a prehearing questionnaire was issued to Respondents. They filed a timely response thereto on December 3, 2020. Following a prehearing telephone conference on January 13, 2021, a hearing was scheduled for April 8, 2021, on the following issues:

1. Whether Claimant sustained compensable injuries by specific incident to her right leg, ankle and shoulder, and to her left leg and knee.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits from October 23, 2020, to a date yet to be determined.
4. Whether Claimant is entitled to a controverted attorney’s fee.

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However, on March 19, 2021, James emailed me, stating that “[t]he parties are not ready to proceed to a hearing at this time” and adding that she had been unable to reach Claimant by either telephone or mail. Per James’s request, the hearing was cancelled, and the file was returned to the Commission’s general files, on March 19, 2021.

Shortly thereafter, on March 22, 2021, James filed a motion to withdraw from her representation of Claimant. In an order entered on April 7, 2021, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects on June 29, 2021, Respondents filed the instant motion to dismiss. Therein, they argued that dismissal was warranted under AWCC R. 099.13 because of Claimant’s “failure to diligently prosecute or pursue this claim.” On July 23, 2021, a hearing on the motion was scheduled for August 26, 2021, at 9:30 a.m. at the Commission in Little Rock. The notice was sent to Claimant by first-class and certified mail. The certified letter was claimed on July 26, 2021; and the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing on the motion to dismiss proceeded as scheduled on August 26, 2021. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authority.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, I hereby make the following findings of fact and conclusions of law 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 this claim under AWCC R. 099.13.
4. The motion to dismiss is hereby granted; the claim is hereby dismissed without prejudice under AWCC R. 099.13.

III. DISCUSSION

AWCC 099.13 provides:

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). (Emphasis added) Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark.

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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 in pursuit of it (including appearing at the August 26, 2021, hearing to argue against its dismissal) since her hearing was cancelled on March 19, 2021. Thus, the evidence preponderates that dismissal is warranted under Rule 099.13.

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). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. But based on the above authorities, I agree and find that the dismissal of the claim should be and hereby is entered *without prejudice*.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby dismissed *without prejudice*.

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IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge