

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H300512**

WILLIE L. JACKSON, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., SELF-INSURED EMPLOYER	RESPONDENT
TYNET CORP., THIRD-PARTY ADM'R	RESPONDENT

OPINION FILED OCTOBER 31, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on October 31, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jeremy Swearingen, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on October 31, 2024, in Little Rock, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents were represented at the hearing by Mr. Jeremy Swearingen, Attorney at Law, of Little Rock, Arkansas. 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, reports, and correspondence related to this claim, consisting of 70 pages.

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The evidence reflects that per the First Report of Injury or Illness filed on February 2, 2023, Claimant purportedly suffered multiple injuries to his face at work on January 2, 2023, when he tripped and fell, hitting his head on a hopper. According to the Form AR-2 that was filed on February 3, 2023, Respondents accepted the claim as a medical-only one.

On January 25, 2023, Claimant filed a Form AR-C, requesting only medical treatment. In response thereto on February 1, 2023, Respondents sent a letter to the Commission, stating that they had accepted Claimant's nose and left injuries as compensable.

No further action on the claim took place until August 14, 2023. On that date, Respondents filed their first Motion to Dismiss. Therein, they argued that dismissal was warranted under Ark. Code Ann. § 11-9-702(a)(4)¹ (Repl. 2012) and AWCC R. 099.13 because Claimant "has made no bona fide request for a hearing in over six (6) months and has made no indication of any intent to prosecute the claim toward a resolution." The file was assigned to me on August 15, 2023; and on August 16, 2023, my office wrote Claimant, requesting a response to the motion within 20 days. The letter was sent to the address for Claimant that he had placed on his Form AR-C. He claimed the certified letter on August 18, 2023; and the first-class mailing was not returned. Nonetheless, no response to the Motion to Dismiss was forthcoming. On September 6, 2023, a

¹Because this is an accepted claim, the applicable provision is instead § 11-9-702(d).

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hearing on the motion was scheduled for October 12, 2023, at the Commission in Little Rock. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. Once again, he signed for the certified mailing—on September 9, 2023—and the first-class letter was not returned.

On October 12, 2023, just prior to the commencement of the hearing, Claimant appeared, objected to dismissal, and requested a hearing on his claim. Based on this, Respondents withdrew their motion. I retained the file and issued prehearing questionnaires to the parties that same day. Claimant filed his response to the Preliminary Notice on October 26, 2023, representing that the amount in dispute was \$2,500.00 or less. Based on this, I had the file transferred to the Legal Advisor Division to conduct a mediation. However, the mediation did not take place because Claimant informed the Legal Advisor Division that he was no longer sure that the amount in dispute was at or below the \$2,500.00 threshold. For that reason, on March 11, 2024, the file was returned to the Commission's general files.

On March 8, 2024, Respondents filed their second Motion to Dismiss. Therein, they contended that despite their efforts to discover from Claimant what medical benefits were at issue in this matter, he had not been forthcoming. The file was reassigned to me on March 12, 2024; and the next day my office wrote Claimant, asking that he respond to the motion within 20 days. In a certified letter sent to the Commission on March 27, 2024, and received on April 3, 2024, Claimant responded, writing:

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Dear Mrs. Catherine Ferguson,

I Willie Jackson, [am] requesting a hearing.

Sincerely, /s/ Willie Jackson

The second Motion to Dismiss was held in abeyance, and new questionnaires were issued to the parties on April 3, 2024. Respondents' counsel—as he has done in the past—reached out to Claimant by email, requesting that he contact him by phone. Claimant filed a timely prehearing questionnaire response on April 17, 2024; and Respondents followed suit on April 30, 2024. On May 9, 2024, a prehearing conference was scheduled for June 17, 2024. However, Claimant sent an email on June 3, 2024, indicating that he wanted to obtain counsel. Based on this, I postponed the conference until August 19, 2024.

The prehearing conference took place as scheduled on August 19, 2024. Claimant was *pro se*. A hearing was scheduled for December 5, 2024, at 9:30 a.m. at the Commission in Little Rock to litigate the following issue: “Whether Claimant is entitled to additional treatment of his stipulated compensable injury [a laceration about his left eye].”

On September 20, 2024, Respondents informed me by email that Claimant had not responded to their discovery requests. I emailed Claimant that same day, utilizing the same email thread, stating:

Mr. Jackson, you are expected to cooperate with Mr. Swearingen in getting him the discovery that he is seeking from you. If you fail to do this, I fully expect him either to ask me to order you to do this,

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and/or to dismiss your claim for your failure to prosecute it. Please contact my office with any questions.

Respondents emailed my office on September 26, 2024, detailing their fruitless efforts to get Claimant to respond. Based on this, I informed the parties that I would be scheduling a hearing on the second Motion to Dismiss. However, the December 5, 2024, hearing was kept on the calendar.

That same day, Respondents filed their third Motion to Dismiss, contending that Claimant had not provided them with responses to their discovery requests and had ignored communications from them. Also on September 26, 2024, I scheduled a hearing on the motion for October 31, 2024, at 9:30 a.m. at the Commission in Little Rock. As was done previously, Claimant was sent this notice by first-class and certified mail. He signed for the certified mailing on October 2, 2024; and the first-class mailing was not returned.

The hearing on the third Motion to Dismiss proceeded as scheduled on October 31, 2024. Again, Claimant failed to appear. Respondents appeared through counsel and argued for dismissal of the action under the aforementioned authorities.

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):

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. All parties received notice of the third Motion to Dismiss and the October 31, 2024, hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.
4. Respondents' third Motion to Dismiss should be, and hereby is, granted.
5. This claim for additional benefits is hereby dismissed *without prejudice*.
6. The December 5, 2024, full hearing on this claim is hereby cancelled.

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)

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 this claim—by a preponderance of the evidence. This standard means the evidence

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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 third Motion to Dismiss and of the hearing thereon; and (2) Claimant has failed to pursue his claim because he has repeatedly refused to respond to discovery, despite my explicit instructions for him to do so and despite Respondents' efforts to get him to cooperate. Moreover, he failed to appear at the hearing on October 31, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the application of Ark. Code Ann. § 11-9-702 (Repl. 2012) 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 concur and find that the dismissal of this claim should be and hereby is entered *without prejudice*.²

²"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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Because of the above finding, the full hearing on this claim, currently scheduled for December 5, 2024, has been rendered moot and is hereby cancelled.

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*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge