

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H208397**

ANIEFIOK JACOB, EMPLOYEE

CLAIMANT

**NUCOR YAMATO STEEL CO.,
EMPLOYER**

RESPONDENT

**ARCH INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED JULY 26, 2024

Hearing before Administrative Law Judge O. Milton Fine II on July 25, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Scott Hunter, Jr., Attorney at Law, Jonesboro, Arkansas (neither appearing).

Respondents represented by Mr. Zachary F. Ryburn, 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 July 25, 2024, in Little Rock, Arkansas. No testimony was taken in the case. Claimant failed to appear at the hearing; and his counsel waived his appearance. Admitted into evidence was Respondents' Exhibit 1, correspondence and forms related to this claim, consisting of one index page and four 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 on the claim, consisting of 34

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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 December 15, 2022, Claimant purportedly suffered an injury to his lower back while driving a forklift at work on January 21, 2020. According to the Form AR-2 that was also filed on December 15, 2022, Respondents controverted the claim in its entirety, claiming that the statute of limitations barred the claim and that the Commission lacked jurisdiction over the matter since Claimant was hired in Tennessee and the alleged injury purportedly occurred there.

On November 30, 2022, through counsel, Claimant filed a Form AR-C. Therein, he asserted that his client was entitled to the full range of initial benefits as the result of his alleged back injury, which was represented to have occurred on January 20, 2020. In an amended Form AR-C filed on December 14, 2022, the alleged date of injury was changed to January 21, 2020.

Counsel sent a letter to the Commission on January 5, 2023, requesting a hearing on the claim. The file was assigned to me on January 6, 2023; and on January 12, 2023, I issued prehearing questionnaires to the parties. Respondents' co-counsel entered his appearance on January 17, 2023. Claimant filed a timely response thereto on January 27, 2023, and Respondents followed

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suit on February 2, 2023. Following a prehearing telephone conference on March 6, 2023, I issued a prehearing order on March 7, 2023, that scheduled a hearing for May 19, 2023, on the following issues:

1. Whether the Commission has jurisdiction over this claim.
2. Whether this claim is barred by the statute of limitations.
3. Whether Claimant sustained a compensable injury to his back by specific incident.
4. Whether Claimant is entitled to reasonable and necessary medical treatment of his alleged back injury.
5. Whether Claimant is entitled to temporary total disability benefits.
6. Whether Claimant is entitled to an impairment rating and permanent partial disability benefits pursuant thereto.
7. Whether Claimant is entitled to a controverted attorney's fee.

However, on May 18, 2023, Claimant requested that the hearing be cancelled in order to allow the parties time to pursue settlement. The request was granted, and the file was returned to the Commission's general files.

On April 24, 2024, Claimant's counsel again wrote the Commission, requesting a hearing on the claim. The file was reassigned to me by the Clerk of the Commission on April 30, 2024; and on May 1, 2024, I again issued prehearing questionnaires to the parties. Claimant filed a timely response thereto on May 20, 2024, and Respondents did as well on June 10, 2024. During the July 1, 2024,

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prehearing telephone conference, the parties agreed that another conference was needed. This was set by agreement for July 15, 2024.

However, on July 8, 2024, the office of Claimant's counsel emailed me the following:

Judge Fine,

We have spent a considerable amount of time discussing this matter with our Claimant and after thoughtful consideration, he has decided that he does not want to continue to pursue this matter any further. We are unsure of the best route to take as far as proceeding forward with a Motion to Dismiss without prejudice or if we should allow it to sit in general files for the 6 month time frame before proceeding. If you will, please advise and we will act promptly. Thank you, Your Honor!

I replied to the parties that same day:

I am interpreting this communication as (1) a withdrawal of Claimant's hearing request and (2) his lack of objection to dismissal of his case without prejudice. I will hold the file in my office for seven days. If a motion to dismiss is filed within that time frame, I will expedite the hearing and hold it here in Little Rock. Otherwise, I will simply return this file to the Commission's general files. Thanks

Claimant's counsel replied to this:

Judge Fine,

With regard to your below email, we are withdrawing our hearing request and will not be objecting to a dismissal of his case without prejudice.

In prompt response to my communication, Respondents on July 8, 2024, filed the instant Motion to Dismiss. Because of Claimant's waiver of objection to dismissal, no formal response to the motion was sought from him. Instead, as

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indicated, a hearing was set for July 25, 2024, at 10:00 a.m. at the Commission in Little Rock. The July 17, 2024, Notice of Hearing was sent to Claimant via certified mail. He claimed the mailing on July 23, 2024. The attorneys received their copies of the notice via email.

The hearing on the Motion to Dismiss proceeded as scheduled on July 25, 2024. Again, both Claimant and his attorney 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.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.

4. The Motion to Dismiss is hereby granted; this claim for initial 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 of his stated intention on July 8, 2024, that he would not be pursuing it any further. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding,

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it is unnecessary to address the application of Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

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 initial benefits is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

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).