

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H401930**

<b>TRAVIS L. JONES, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>JONES DIRT WORKS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMTRUST INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED NOVEMBER 1, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on November 1, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. William C. Frye, Attorney at Law, North 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 1, 2024, in Jonesboro, 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, reports, and correspondence related to this claim, consisting of 13 pages; and Respondents’ Exhibit 1, a one-page felony information bearing Claimant’s name and address (offered and considered only to verify his address).

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The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on April 1, 2024, Claimant purportedly suffered an injury to his knee at work on January 12, 2024, when he fell off a tractor. According to the Forms AR-2 that were filed on April 1 and July 16, 2024, respectively, Respondents accepted the claim as a medical-only one.

On March 19, 2022, Claimant's then-counsel Mark Alan Peoples made his entry of appearance and filed a Form AR-C on his client's behalf, requesting the full range of initial benefits. No request for a hearing on the claim accompanied this filing. Respondents' counsel entered his appearance on April 3, 2024.

Peoples on July 22, 2024, moved to withdraw from his representation of Claimant. In an Order entered on August 14, 2024, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2.

Respondents filed the instant Motion to Dismiss under AWCC R. 099.13 on August 19, 2024. Therein, they asserted that the claim should be dismissed “[b]ased on the fact that the Claimant has taken no action on this matter since the AR-C was filed . . . .” The file was reassigned to me on that same date; and on August 20, 2024, my office wrote Claimant, requesting that he respond to the motion within 20 days. The correspondence was sent by certified and first-class mail to the address for Claimant listed on his Form AR-C. The United States Postal Service (“USPS”) returned the certified letter to the Commission on September 9, 2024, with the notation:

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RETURN TO SENDER  
NO SUCH STREET  
UNABLE TO FORWARD

But the first-class mailing was not returned. Regardless, no response by him to the motion was forthcoming.

On September 10, 2024, a hearing on the Motion to Dismiss was scheduled for November 1, 2024, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, the certified letter was returned to the Commission by USPS with the notation:

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

But once again, the first-class mailing was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on November 1, 2024. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13.

## **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):

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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 AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this claim 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).

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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 November 1, 2024, hearing to argue against its dismissal) since the filing of his Form AR-C on March 19, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 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). 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*.<sup>1</sup>

#### **IV. 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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<sup>1</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).

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**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge