

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H101398**

RITA JORDAN, EMPLOYEE	CLAIMANT
HINO MOTOR MFG., USA, INC., EMPLOYER	RESPONDENT
SOMPO AMER. FIRE & MARINE INS. CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 23, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on January 27, 2023, in Marion, Crittenden County, Arkansas.

Claimant *pro se*.^a

Respondents represented by Messrs. Michael E. Ryburn and Zachary Ryburn, Attorneys at Law, Little Rock, Arkansas.

On January 27, 2023, the above-captioned claim was heard in Marion, Arkansas. A prehearing conference took place on September 12, 2022. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

¹Claimant was represented at the prehearing telephone conference by Ms. Marie A. Crawford, Attorney at Law, of Sherwood, Arkansas. However, on October 6, 2022, I entered an order allowing Ms. Crawford to withdraw from the matter pursuant to AWCC Advisory 2003-2.

JORDAN - H101398

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employer/employee/carrier relationship existed on or about August 22, 2019.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage entitles her to compensation rates of \$333.00/\$250.00.

Issues

The parties discussed the issues set forth in Commission Exhibit 1. After amendments at the hearing, the following were litigated:

1. Whether the January 27, 2023, hearing on this claim should be continued.
2. Whether this claim should be dismissed pursuant to AWCC R. 099.13 due to Claimant's leaving (without permission) the courthouse during her testimony and thereby preventing the completion of the hearing.
3. Whether this claim for initial benefits is barred by the statute of limitations.

JORDAN - H101398

3. Whether Claimant sustained compensable injuries by specific incident to her right hip, leg, knee, shin, ankle, foot, elbow and hand, along with her back and buttocks.
4. Whether Claimant sustained compensable consequences in the forms of lumbar radiculitis and radiculopathy.
5. Whether Claimant is entitled to reasonable and necessary medical treatment of her alleged injuries.

All other issues have been reserved.

Contentions

After amendments at the hearing, the respective contentions of the parties read as follows:

Claimant:

1. Claimant suffered injuries to the right foot, right leg, right ankle, back, buttocks, right arm, and right elbow in an accident that arose out of and in the course of employment with the respondent employer on August 22, 2019.
2. On the date of the accident, Claimant's job was on the production line and involved the inspection of truck axles.
3. Claimant picked up two drums for placement on each end of a truck axle when a forklift driver hit the chute and knocked it onto Claimant's right foot. The foot became trapped under the frame of the chute as a result. This, in turn, caused Claimant to fall

JORDAN - H101398

backwards onto the floor while still holding the drums. She landed on her back and buttocks. The forklift driver and another employee had to lift the chute from Claimant's right foot and ankle in order to free her.

4. Claimant required immediate medical treatment. The medical providers at Coast to Coast Medical, LLC, diagnosed her with contusion of the foot and noted tenderness to the top of the foot. She also suffered abrasions and swelling to the foot, along with pain. The medical provider released Claimant with no restrictions after the medical appointment on the same date of the accident. In addition, the respondent employer required that she return to the production line at the conclusion of the initial medical appointment. In addition, on the same date as the accident, the respondent employer directed her to re-enact the accident, which included getting down on the floor where she had fallen and placing her leg back under the chute. However, Claimant was unable to perform the re-enactment because of pain and swelling. She informed the respondent employer that she was unable to continue regular duties on the production line.
5. After the date of the accident, Claimant continued medical treatment at Coast to Coast Medical. In addition, she has required medical treatment at OrthoSouth for right leg and back pain, plus

JORDAN - H101398

leg swelling and numbness; with Dr. Michael Hood, with Delta Orthopedics and Sports Medicine, for right leg and hip pain; with Dr. Phillip Green, M.D., with MidSouth Pain and Anesthesia, for radiculopathy; with Marion Minor Medical for pain in the right knee and hip joints; with East Arkansas Family Health Center for right leg pain and swelling; and with Diagnostic Imaging, P.C., for lumbar, right hip, and right leg pain.

6. The pain from the injuries that Claimant suffered in the accident have become chronic and have developed into radiculopathy and radiculitis.

Respondents:

1. Respondents contend that the incident in question did not occur in the manner alleged by Claimant. She lacks objective medical findings of an injury. The alleged injuries occurred prior to the event at issue. The statute of limitations bars all or part of this claim. Specifically, any claim for a body part other than the right foot is time-barred.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her

JORDAN - H101398

demeanor, 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 stipulations set forth above are reasonable and are hereby accepted.
3. Claimant's motion to continue the hearing is without merit and is hereby denied.
4. Because the evidentiary portion of the hearing was not completed (due to Claimant leaving the hearing while still on the witness stand), the merits of the substantive issues cannot be reached on the evidentiary record.
5. Respondents have proven by a preponderance of the evidence that the claim should be dismissed without prejudice pursuant to AWCC R. 099.13 due to Claimant's leaving (without permission) the courthouse during her testimony, which prevented the hearing from being completed.
6. Because of the above finding, the remaining issues—whether this claim for initial benefits is barred by the statute of limitations; whether Claimant sustained compensable injuries by specific incident to her right hip, leg, knee, shin, ankle, foot, elbow and hand, along with her back and buttocks; whether Claimant

JORDAN - H101398

sustained compensable consequences in the forms of lumbar radiculitis and radiculopathy; and whether Claimant is entitled to reasonable and necessary treatment of her alleged injuries—are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

In addition to the Prehearing Order discussed above, admitted into evidence in this case were the following: Claimant’s Exhibit 1, a compilation of her medical records, consisting of 50 numbered pages; and Respondents’ Exhibit 1, Claimant’s Forms AR-C filed on February 4, 2021, and July 1, 2021, consisting of two pages.

Adjudication

A. Motions for a Continuance and to Dismiss

During the hearing, Claimant took the witness stand. Because she had no attorney to question her on direct examination, I conducted this portion of her examination, asking questions that were geared toward helping me to make findings of fact and conclusions of law on the above-stated issues. [R. 13-36] This was in keeping with Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012), which provides in pertinent part that the “Commission . . . may make such investigation or inquiry, or conduct the hearing, in a manner as will best ascertain the rights of

JORDAN - H101398

the parties.” At the end of this line of questioning, Respondents’ co-counsel began his cross-examination. [R. 36]

During cross-examination, co-counsel asked about two discrepancies in her testimony. The first was her testimony on direct that she had no previous back problems, when she had been involved in a motor vehicle accident less than one year prior to the incident at issue, which resulted in her undergoing back treatment. [R. 36-37] The second was her testimony that she had been involved in any accidents since the incident at issue that had caused her to suffer an injury. Asked about medical records purporting to bear her name that reflected that she passed out while walking up steps and had injured her neck, she stated that she had no memory of such an occurrence. [R. 37-38] Co-counsel, still conducting his cross-examination into matters related to Claimant’s credibility,^b segued into questions about her treatment for anxiety. The following exchange took place:

Q. Matter of fact, one doctor in these reports says your anxiety is a bigger problem than anything you sustained in this accident.

A. No, sir.

Q. Why do you have anxiety?

²The determination of a witness’s credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

JORDAN - H101398

A. Dealing with life, sir.

Q. And you're taking a drug called Chlorazepam?

A. Yes, sir.

Q. Do you still take it?

A. I hope I'm done. (Yelling) That rings—that's part of the problem. I'm done, done.

JUDGE FINE: Ma'am. Ma'am, hang on.

A. I'm done. Done. That question, y'all can have it. I don't care. (Witness crying) I'm done with this.

JUDGE FINE: Ma'am—

A. No. I'm done. (Claimant left the room)

[R. 39-40]

I recessed the hearing and attempted to locate Claimant. This was unsuccessful. She apparently had left the courthouse. [R. 41] Thereafter, I went back on the record. The following colloquy occurred:

JUDGE FINE: Just to recap, prior to me going off the record, while the claimant was undergoing cross-examination she became visibly upset and stood up from her chair. And I attempted to calm her down and asked her to remain, because she was making actions that was indicating that she was going to leave the courtroom. And I don't know how much of this can be taken down because she was talking over any attempts to speak with her. And basically, again, she said, 'I'm done with this.'" And she left the hearing room. At that point I recessed the hearing and attempted to locate the claimant in the building; and the nearest I can ascertain, based upon my attempt on this, is that she departed the premises, so suffice it to say I think the claimant does not appear to have any intention of returning and resume taking the stand. It certainly does not appear to be the case. So with that in mind, I'm turning this over to the

JORDAN - H101398

respondents and asking if you have anything you wish to offer or move for at this point.

MR. MIKE RYBURN: Yes, Your Honor. Based upon our observation, it appears to me that the claimant has abandoned her claim. She announced that, I believe, that "Y'all can have this. I don't want to do this anymore," and left the courtroom while the hearing was in session. Therefore, we ask that this claim be dismissed—

JUDGE FINE: Okay. Under Rule—

MR. MIKE RYBURN: —under Rule 13.

JUDGE FINE: 13 is for want of prosecution.

MR. MIKE RYBURN: Yes, sir.

JUDGE FINE: All right. I don't think there is anything else to be done at this point, since it doesn't appear that we can resume the hearing because of the claimant departing, so what I will do at this point is I'm going to take the respondents' motion under advisement.

[R. 41-42]

Thereafter, Respondents' co-counsel represented that he had not completed his cross-examination (which the transcript makes apparent). In turn, I stated on the record that what had been elicited during the relatively brief questioning of Claimant by Respondents had me intending to ask the Claimant more questions during redirect examination. [R. 43-44] It is thus obvious that she did not finish presenting her case-in-chief.

Section 11-9-705(a)(1), referenced above, states in its entirety:

In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory

JORDAN - H101398

rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

The Commission has long held that, notwithstanding its not being bound by the rules of evidence or procedure, it must conduct hearings in a manner that promotes “fairness” to the parties. *See, e.g., Moss v. Rogers Logging Co.*, 2013 AR Wrk. Comp. LEXIS 547, Claim No. G101576 (Full Commission Opinion filed August 28, 2013); *Bryant v. Staffmark, Inc.*, 2001 AR Wrk. Comp. LEXIS 563, Claim No. F006077 (Full Commission Opinion filed March 23, 2001). *See also Sapp v. Tyson Foods*, 2010 Ark. 517, 2010 Ark. App. LEXIS 549. I find that to rule on the merits of the claim based on the incomplete record would unfairly surprise and prejudice Respondents.

That said, Claimant ultimately returned to the hearing, at 12:15 p.m. This was roughly 30 minutes after she departed, which took place at 11:43 a.m. She testified that she had been in the parking lot of the courthouse; and she asked me at that point to resume the hearing. Respondents objected, pointing out that only 15 minutes remained on the allotted time for the hearing—and that their counsels would be trying the next hearing on my docket as well. [R. 49-50] I represented to the parties that insufficient time remained to complete the hearing. [R. 50-51] I again took the Motion to Dismiss under advisement, as I did Claimant’s motion to continue the hearing and resume it at a later date. [R. 52]

JORDAN - H101398

Under AWCC R. 099.13:

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)(discussing, *inter alia*, Rule 13).

As shown by the evidence, Claimant without good cause and in defiance of the Commission departed from the courtroom while she was still on the witness stand. She could not be located. Insufficient time remained, upon her return, to complete the hearing. Claimant's Motion for a Continuance is not well-grounded, and is hereby denied. Not only was her case-in-chief left incomplete, but Respondents were left unable to, *inter alia*, finish their cross-examination. The evidence thus shows that Claimant has failed to prosecute her claim, and that reasonable notice of the proceeding was provided to her. Hence, dismissal of the instant claim is justified under Rule 13. Respondents have met their burden of proof on this matter.

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

JORDAN - H101398

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)). Based on the above authorities, I find that the dismissal of this claim should be and hereby is entered *without prejudice*.^c

B. Remaining Issues

Because of the above findings and conclusions, the remaining issues—whether this claim for initial benefits is barred by the statute of limitations; whether Claimant sustained compensable injuries by specific incident to her right hip, leg, knee, shin, ankle, foot, elbow and hand, along with her back and buttocks; whether Claimant sustained compensable consequences in the forms of lumbar radiculitis and radiculopathy; and whether Claimant is entitled to reasonable and necessary treatment of her alleged injuries—are moot and will not be addressed.

IV. CONCLUSION

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

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge

³“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).