

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H406944**

<b>ROBERT T. MAXWELL, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>LEVY ENVIRONMENTAL SVCS. CO., INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>OLD REPUBLIC INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MAY 26, 2026**

Hearing before Administrative Law Judge O. Milton Fine II on May 22, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Erin C. Rambo, Attorney at Law, Fort Smith, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on May 22, 2026, 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 Respondents' Exhibit 1, the Motion to Dismiss, consisting of two pages; Respondents' Exhibit 2, Claimant's Form AR-C, consisting of one page; and Respondents' Exhibit 3, the Order granting Mark Peoples's Motion to Withdraw, consisting of one page. 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

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ascertains the rights of the parties”), and without objection, I have blue-backed to the record documents—forms, pleadings, and correspondence—from the Commission’s file on the claim, consisting of 27 pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

The record shows the following procedural history:

On October 23, 2024, through then-counsel Peoples, Claimant filed a Form AR-C. Therein, Claimant requested the full range of additional benefits in connection injuries that he alleged that he sustained at work on October 8, 2024. Respondents’ counsel made her entry of appearance on November 5, 2024.

On January 2, 2025, Peoples emailed the Commission: “Please assign this claim to a judge for a hearing on the issue of compensability.” The file was assigned to me that same day; and on January 3, 2025, my office sent preliminary notices and prehearing questionnaires to the parties. The parties filed timely responses to these items—on January 19 and 31, 2025, respectively. After a prehearing telephone conference on March 17, 2025, I scheduled a hearing on the claim for May 16, 2025, 12:30 p.m. at the Craighead County Courthouse in Jonesboro. However, on May 3, 2025, Peoples emailed my office: “Claimant will withdraw his hearing request at this time. Please return this matter to the Commission’s general files.” On May 5, 2025, I notified the parties that I

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was, as requested, cancelling the hearing and returning the file to the Commission's general files.

Peoples moved to withdraw from his representation of Claimant on January 14, 2026. In an Order entered on February 18, 2026, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until February 27, 2026. On that date, Respondents filed the instant motion under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702(a)(4), asking for dismissal of the claim because Claimant “has had reasonable time to move forward with this claim but has failed to do so . . . .” On March 2, 2026, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Keiser, Arkansas address for Claimant that was listed in the file and on his Form AR-C. The United States Postal Service (“USPS”) was unable to verify whether certified letter was claimed; but neither it nor the first-class letter was returned. Regardless, no response to the motion was forthcoming. On April 2, 2026, a hearing on the Motion to Dismiss was scheduled for May 22, 2026, at 1:00 p.m. at the Craighead County Courthouse in Jonesboro. As of the date of the hearing, Claimant had not yet claimed the certified mailing; but the first-class mailing of the same document was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under aforementioned authority.

## **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. The evidence preponderates that Claimant has failed to prosecute his claim under 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby granted; this claim is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

## **III. DISCUSSION**

11 C.A.R. § 25-110(d) (formerly 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.

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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 he has taken no steps to pursue it (including appearing at the May 22, 2026, hearing to argue against its dismissal) since his hearing was cancelled, and his file returned to the Commission's general files, at his request over one year ago. Thus, the evidence preponderates that dismissal of the claim is warranted under 11 C.A.R. § 25-110(d). Because of this finding, the applicability of § 11-9-702(a)(4) 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

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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 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*.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge

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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).