

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H205073**

DeLEON MOREHEAD, EMPLOYEE	CLAIMANT
HINO MTRS. MFG. USA, INC., EMPLOYER	RESPONDENT
FIRST LIBERTY INS. CORP., CARRIER	RESPONDENT

OPINION FILED OCTOBER 28, 2024

Hearing before Administrative Law Judge O. Milton Fine II on October 25, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jason M. 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 October 25, 2024, in Forrest City, 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 16 pages.

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The record shows the following procedural history:

Per the First Report of Injury or Illness filed on July 15, 2022, Claimant purportedly suffered an injury to his knee at work on July 7, 2022. According to the Forms AR-2 that were filed on July 19 and 20, 2022, respectively, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

On November 29, 2023, through then-counsel B. Tanner Thomas of Rainwater, Holt & Sexton, Claimant filed a Form AR-C, requesting the full range of initial and additional benefits in connection with his knee injury that he allegedly suffered at work on July 7, 2022, while he was “marking inventory.” No hearing request accompanied this filing. Respondents emailed the Commission on November 29, 2023, indicating that their position had not changed.

Respondents’ counsel entered his appearance before the Commission on May 29, 2024. On March 18, 2024, through co-counsel Laura Beth York, the Rainwater firm moved to withdraw from their representation of Claimant. In support of the motion, York attached to it a letter the firm sent Claimant on February 6, 2024, documenting that they had been unsuccessful in their efforts to reach Claimant by phone and by mail. In an Order entered on April 23, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until August 15, 2024. On that date, Respondents filed the instant motion, asking for dismissal

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of the claim because “the claimant has failed to prosecute his claim for additional workers’ compensation benefits.” My office wrote Claimant on August 20, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Memphis, Tennessee address for him listed in the file and on the Form AR-C. The United States Postal Service (“USPS”) was unable to confirm whether Claimant had claimed the certified letter; but the first-class letter was not returned. Regardless, no response from him to the motion was forthcoming. On September 13, 2024, a hearing on the Motion to Dismiss was scheduled for October 25, 2024, at 12:30 p.m. at the St. Francis County Courthouse in Forrest City. The notice was sent to Claimant via first-class and certified mail to the same address as in the previous instance. As before, while USPS could not confirm delivery of the certified letter, the first-class letter was not returned to the Commission.

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 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 for additional 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).

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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 October 25, 2024, hearing to argue against its dismissal) since the filing of his Form AR-C on November 29, 2023. 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*.¹

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*.

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).

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IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge