

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. G907965**

JOHN MUNN, EMPLOYEE	CLAIMANT
ARK. DEPT. OF CORR., EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIV., CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 12, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on November 8, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant (not appearing) represented by Mr. Kenneth A. Olsen, Attorney at Law, Bryant, Arkansas (excused from participation).

Respondents represented by Mr. Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

On November 8, 2024, the above-captioned claim was heard in Forrest City, Arkansas. A prehearing conference took place on September 16, 2024. The Prehearing Order entered on September 17, 2024, pursuant to the conference was admitted without objection as Commission Exhibit 1.

Stipulations

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2. The employee/employer/carrier relationship existed among the parties on July 30, 2019, when Claimant sustained a compensable injury to his eyes by specific incident.
3. Respondents accepted the above injury as a medical-only one; however, they have denied that he suffered any other compensable injuries as a result of the above-described incident.
4. Claimant's average weekly wage of \$1,015.58 entitles him to compensation rates of \$677.00/\$508.00.

Issues

The following issues were to have been litigated:

1. Whether this claim should be dismissed for want of prosecution under AWCC R. 099.13.
2. Whether Claimant sustained compensable injuries to his lumbar spine and left shoulder by specific incident.
3. Whether Claimant is entitled to reasonable and necessary medical treatment of his alleged compensable injuries.
4. Whether Claimant is entitled to temporary total disability benefits.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends that he sustained a shoulder and lumbar spine injury arising from and in the course of his employment on or about July 30, 2019, and is entitled to medical and indemnity benefits and attorney's fees.

Respondents:

1. Respondents contend that Claimant has a history of back problems. He reported an injury on July 30, 2019, involving pepper spray in his eye after an incident with an inmate. Respondents accepted this as a medical-only claim. However, Claimant sought no treatment, returned to work, and made no further complaint about his shoulder or back until November 13, 2019.
2. A hearing was scheduled to take place on August 12, 2020. After that hearing was cancelled at Claimant's request, the file was returned to the Commission's general files on September 9, 2020, and there was no activity on the claim until Respondent filed a Motion to Dismiss for Want of Prosecution on December 14, 2021. In response to this motion, Claimant objected and demanded a hearing. This hearing, set for June 10, 2022, was cancelled at his request; and the file was once again returned to the Commission's general files. Respondents filed another dismissal motion on June 3, 2024, to which Claimant has also objected.

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3. Respondents contend that Claimant cannot sustain his burden of proving his entitlement to medical treatment that is reasonably necessary for or causally related to a compensable injury to his back or shoulder and arising out of and in the course of his employment on July 30, 2019.
4. In the event that Claimant is awarded temporary total disability benefits, he cannot be entitled to them in excess of unemployment benefits that he received for that same week, per Ark. Code Ann. § 11-9-506 (Repl. 2012).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, 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. The evidence preponderates that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. This claim is hereby dismissed *without prejudice*.
5. Because of the above findings/conclusions, the remaining issues—whether Claimant sustained compensable injuries to his left

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shoulder and lumbar spine, whether he is entitled to reasonable and necessary treatment of these alleged injuries, whether he is entitled to temporary total disability benefits, and whether he is entitled to a controverted attorney's fee—are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

In addition to the Prehearing Order discussed above, admitted into evidence in this case were the following: Commission Exhibit 2, email and regular correspondence dated November 6, 2024, consisting of two pages; and Respondents' Exhibit 2, pleadings and correspondence, consisting of one index page and 17 numbered pages thereafter.

Adjudication

A. Motion to Dismiss

On November 6, 2024, Claimant's counsel sent me and Respondents' counsel a letter that reads in pertinent part:

As discussed earlier today, I received a phone call from Mr. Munn during which he advised that he did not intend to appear at the hearing scheduled in this claim for 12:30 p.m. on Friday, November 8, 2024, and expressed that I should go ahead with the dismissal [motion] as filed by [Respondents' counsel]. As such, I do not expect him to be present on Friday, and seek to be excused as well.

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As expected, Claimant failed to appear at the hearing at the appointed time. Based on this, Respondents renewed their request that the claim be dismissed under AWCC R. 099.13, which 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 claims—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 demonstrated by the foregoing, Claimant without good cause failed to appear at the hearing. The evidence thus establishes that he has failed to prosecute his claim, and that reasonable notice of the proceeding was provided to him. Hence, dismissal of the instant claim is readily 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.

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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 with prejudice. Based on the foregoing, I concur and find that the dismissal of this claim should be and hereby is entered *without prejudice*.

B. Remaining Issues

Because of the above foregoing, the remaining issues—whether Claimant sustained compensable injuries to his left shoulder and lumbar spine, whether he is entitled to reasonable and necessary treatment of these alleged injuries, whether he is entitled to temporary total disability benefits, and whether he is entitled to a controverted attorney’s fee—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