

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H502091**

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| MATISHA B. NEELY, EMPLOYEE | CLAIMANT |
| TACOS 4 LIFE LLC, EMPLOYER | RESPONDENT |
| UNION INS. OF PROVIDENCE, CARRIER | RESPONDENT |

OPINION FILED DECEMBER 19, 2025

Hearing before Administrative Law Judge O. Milton Fine II on December 19, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Karen H. McKinney, 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 December 19, 2025, in Little Rock, 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, 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 April 10, 2025, Claimant purportedly suffered an injury to her chin/mouth when she passed out at work and fell to the floor. According to the Form AR-2 that was filed on April 11, 2025, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On April 4, 2025, Claimant filed a Form AR-C, requesting temporary partial disability benefits. No hearing request accompanied this filing. Respondents' counsel entered her appearance on April 11, 2025.

The record reflects that nothing further took place on the claim until October 9, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012), along with AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)). Therein, they argued that Claimant has taken no measures to pursue her claim, including requesting a hearing thereon. The file was assigned to me on October 10, 2025; and on that same date, 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 Jonesboro, Arkansas address for her listed in the file and on her Form AR-C. But both items of correspondence were returned to the Commission; the United States Postal Service noted that the certified letter was unclaimed, while the first-

class letter was “not deliverable as addressed.”¹ Unsurprisingly, no response from Claimant to the motion was forthcoming. On November 4, 2025, a hearing on the Motion to Dismiss was scheduled for December 19, 2025, at 12:00 p.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address as before. Once again, both items were returned to the Commission, with each bearing the notation that they were “not deliverable as addressed.”

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 the above authorities.

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.

¹It bears repeating that the address used was the one that Claimant herself supplied to the Commission.

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3. The evidence preponderates that Claimant has failed to prosecute her 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) 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).

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 her claim because she has taken no further action in pursuit of it (including appearing at the December 19, 2025, hearing to argue

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against its dismissal) since the filing of her Form AR-C on April 4, 2025. Thus, the evidence preponderates that dismissal is warranted under the above provision.

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*.²

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*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge

²“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).