

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H404094**

LUZ PINA-SOTO, EMPLOYEE	CLAIMANT
SIMMONS PREPARED FOODS INC., EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES INC./INSURANCE CARRIER	RESPONDENT

OPINION/ORDER FILED **MAY 7, 2026**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Claimant is represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents are represented by R. SCOTT ZUERKER, Attorney, Fort Smith Arkansas

OPINION/ORDER

On April 11, 2025, claimant filed Form AR-C, alleging a compensable injury to her right hand and wrist on January 12, 2024. This claim was accepted as compensable.

On January 7, 2026, respondents filed a Motion to Dismiss pursuant to Ark. Code Ann. § 11-9-702(a)(4) and 11 C.A.R. § 25-110(d), contending that more than six months had elapsed since the filing of claimant's AR-C without claimant having requested a hearing. A hearing on the motion was scheduled for April 24, 2026. Claimant appeared with counsel and opposed the motion.

Ark. Code Ann. § 11-9-702(d) provides, in pertinent part:

If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

11 C.A.R. § 25-110(d) provides, in pertinent part:

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 the parties, enter an order dismissing the claim for want of prosecution.

The purpose of this rule is to permit the claimant to resist dismissal and to show, if she can, why the application for dismissal is without merit. The rule is designed to ensure that the rights of the claimant are not prejudiced.

At the hearing, respondents argued that claimant had not requested a hearing since her AR-C was filed, that Dr. Kelly's October 1, 2025, report did not recommend additional hand treatment, and that claimant was not then seeking any benefits. Claimant responded that the hand claim had not been abandoned but had developed alongside a separate right shoulder and neck claim that shaped the course of treatment and evaluation. The record reflects that claimant underwent surgery on her right hand and wrist performed by Dr. Benafield on April 19, 2024, and later requested a change of physician. Dr. James Kelly assumed her care and evaluated her on October 1, 2025. Claimant's counsel argued that Dr. Kelly's evaluation occurred while the shoulder claim was still being contested and that Dr. Kelly was unaware of the shoulder injury, which counsel contended affected his assessment of claimant's pain complaints and his functional capacity findings. After respondents eventually accepted the shoulder claim, claimant underwent shoulder surgery. Counsel argued that once claimant recovers from that surgery, a fresh evaluation of the hand may well be warranted.

Claimant testified that she continued to experience pain and numbness in her right hand, that she wished to pursue additional treatment if those symptoms persisted after shoulder recovery, and that she had no hand appointments currently scheduled.

Both the statute and the rule are permissive, not mandatory. Section 11-9-702(d) provides that a claim may be dismissed upon the requisite showing of inactivity — not that it shall be. The Commission therefore retains discretion to deny the motion when the circumstances warrant, and this is such a case. Claimant appeared at the hearing, opposed the motion, offered testimony and exhibits, and provided a coherent explanation for the absence of hearing activity: The hand claim has been intertwined with a related shoulder claim that respondents initially contested and only recently accepted. The delay reflects the complexity of a developing record, not abandonment. Claimant pursued a change of physician, underwent evaluation by Dr. Kelly, and testified credibly that she intends to seek additional hand treatment if her symptoms persist following shoulder recovery.

The statute further provides that any dismissal would be without prejudice to refile within the limitations period, and respondents acknowledged at the hearing that Dr. Kelly's October 1, 2025, visit was a covered visit, so that period has not yet run. Dismissal without prejudice would not permanently foreclose claimant's ability to refile, but it would impose an unnecessary procedural burden on a claimant who has done precisely what the rule contemplates, as she appeared, opposed the motion to dismiss, and demonstrated that her claim is not without merit. Exercising discretion to deny the motion avoids that result and ensures that claimant's rights are not prejudiced.

Respondents' Motion to Dismiss is denied.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE