

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H102346

MONIQUE H. PUSZEWSKI, EMPLOYEE	CLAIMANT
ABSOLUTE CARE MGMT. CORP., EMPLOYER	RESPONDENT
STONETRUST COMM. INS. CO., CARRIER	RESPONDENT

OPINION FILED NOVEMBER 8, 2021

Hearing before Administrative Law Judge O. Milton Fine II on November 5, 2021, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jason Ryburn, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a motion to dismiss by Respondents. A hearing on the motion was conducted on November 5, 2021, 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. Without objection, the Commission file on this claim has been incorporated herein in its entirety by reference.

PUSZEWSKI – H102346

The record reflects the following procedural history:

On April 1, 2021, a Form AR-1 was filed in this case, reflecting that Claimant purportedly sustained an injury to her face on October 27, 2020, in the form of Methicillin-Resistant Staph Aureus (“MRSA”). Per the Form AR-2 that was also filed on April 1, 2021, Respondents controverted the claim because the injury in question was allegedly not work-related. On March 5, 2021, Claimant filed a Form AR-C, requesting the full range of benefits and alleging that she contracted MRSA from a client on October 25, 2020, and developed a lesion on her face as a result. Respondents’ co-counsel entered his appearance on March 9, 2021.

The request reflects that nothing further occurred on this claim until September 7, 2021, when Respondents filed the instant motion. Therein, they alleged that dismissal of the claim was warranted because “[n]o efforts to prosecute the claim have been made.” The file was assigned to me on September 9, 2021; and on September 10, 2021, my office wrote Claimant, asking for a response to the motion within twenty (20) days. This letter was sent by both first-class and certified mail to the address for Claimant listed on her Form AR-C. Someone (“JD”) signed for the certified letter on her behalf on September 13, 2021; and the first-class letter was never returned. However, no response to the motion was forthcoming from her.

On October 5, 2021, I scheduled a hearing on Respondents’ motion for November 5, 2021, at 11:30 a.m. at the Craighead County Courthouse in Jonesboro. The hearing notice was sent to Claimant by certified and first-class

PUSZEWSKI – H102346

mail to the same address as before. In this instance, “JD” signed for the certified letter on Claimant’s behalf on October 6, 2021. Again, the first-class letter was not returned. The evidence thus preponderates that Claimant received notice of the hearing.

The hearing proceeded as scheduled on November 5, 2021. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under § 11-9-702(a)(4) (Repl. 2012) and Rule 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):

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 her claim under AWCC R. 099.13.
4. The motion to dismiss is hereby granted; the claim is hereby dismissed without prejudice under AWCC R. 099.13.

III. DISCUSSION

AWCC 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.

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 this matter—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 November 5, 2021, hearing to argue against its dismissal) since the filing of the Form AR-C on March 5, 2021. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss

PUSZEWSKI – H102346

claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). In *Abo v. Kawneer Co.*, 2005 AR Wrk. Comp. LEXIS 510, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (Emphasis added)(citing *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 above authorities, 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 is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge

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).