

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H300188**

JAYNE PHILLIPS, EMPLOYEE	CLAIMANT
KHKW LOGISTICS LLC, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INS. CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 12, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on October 12, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Zachary F. 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 October 12, 2023, 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. Without objection, the Commission's file on the claim has been incorporated herein in its entirety by reference.

The record reveals the following procedural history:

Claimant, through then-counsel Laura Beth York, filed a Form AR-C on January 18, 2023, asking for the full range of initial and additional benefits and

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alleging that Claimant suffered compensable injuries to her neck, back, left shoulder, right shoulder and other whole body on December 29, 2022. Per the Forms AR-2 that were filed on January 10 and 26, 2023, Respondents initially accepted the claim as compensable before electing to controvert it in its entirety.

On February 15, 2023, York moved to withdraw from the case. In an order entered on February 28, 2023, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action took place on this claim until August 3, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal of the claim was warranted because “[n]o further efforts to prosecute the claim have been made” since the filing of the Form AR-C. On August 8, 2023, my office wrote Claimant, asking for a response to the motion within 20 days. This certified letter was claimed by someone with an illegible signature on August 11, 2023; and the first-class letter containing the same correspondence, sent to the address supplied to the Commission by Claimant, was not returned. Nonetheless, no response from her was forthcoming. On August 30, 2023, a hearing on Respondents’ motion was scheduled for October 12, 2023, at 9:30 a.m. at the Commission in Little Rock, Arkansas. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, the United States Postal Service was unable to verify whether Claimant had claimed the certified letter. But the first-class letter was

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never returned. Thus, the evidence preponderates that the notice reached its proper destination.

The hearing proceeded as scheduled on October 12, 2023. 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):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute her claim.
4. Respondents have proven by a preponderance of the evidence that this claim should be dismissed under AWCC R. 099.13.
5. The Motion to Dismiss is hereby granted.
6. This claim is hereby dismissed *without prejudice*.

III. DISCUSSION

AWCC R. 099.13 reads:

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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)(discussing, *inter alia*, Rule 13).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that this claim should be dismissed. 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 he has taken no further action in pursuit of it (including appearing at the October 12, 2023, hearing to argue against its dismissal) since the filing of her Form AR-C on January 18, 2023. Thus, dismissal is warranted under Rule 13. Respondents have met their burden of proof in 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. 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

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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)). At the hearing, Respondents requested a dismissal without prejudice. Based on the foregoing, 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).