

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H302115**

LATRICIA DENISE POLK, EMPLOYEE	CLAIMANT
TOKUSEN USA, INC., EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INS. CO., CARRIER	RESPONDENT

OPINION FILED APRIL 18, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on April 18, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jason M. 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 January 26, 2024, in Marion, 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 without objection were the following: Commission Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 16 pages.

The record reveals the following procedural history:

The First Report of Injury or Illness, filed on March 31, 2023, reflects that Claimant purportedly suffered an injury on March 21, 2023, when she fell at her

POLK – H302115

workplace. Per the Forms AR-2 filed on March 31 and April 6, 2023, Respondents accepted a patellar injury and paid medical and indemnity benefits pursuant thereto.

On May 4, 2023, through then-counsel Laura Beth York, Claimant filed a Form AR-C, alleging that she was entitled to the full range of initial and additional benefits for injuries to her right knee and “other whole body.” No hearing request accompanied this filing. Respondents informed the Commission on May 9, 2023, that they were now controverting the claim in its entirety. Their counsel made his entry of appearance on July 13, 2023. On January 18, 2024, York moved to withdraw from her representation of Claimant. In an Order entered on February 8, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action was taken on the case until February 16, 2024, when Respondents filed the instant Motion to Dismiss, contending that “[n]o efforts to prosecute the claim have been made in more than [six] 6 months from the date of the Form [AR-C].” On February 21, 2024, my office wrote Claimant, requesting a response to the motion within 20 days. This correspondence was sent by both certified and first-class mail to the Conway address for Claimant listed in the file and on her Form AR-C. The certified letter was returned to the Commission, undelivered, on March 18, 2024; but the first-class correspondence was not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

POLK – H302115

On March 19, 2024, a hearing on Respondents' motion was scheduled for April 18, 2024, at 9:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, it could not be verified whether Claimant signed for the certified letter; but again, the first-class letter was not returned.

The hearing proceeded as scheduled on April 18, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under, inter alia, Rule 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. Claimant has failed to prosecute her claim.
4. Dismissal of this claim is warranted under AWCC R. 099.13.
5. The claim is hereby dismissed *without prejudice*.

III. DISCUSSION

AWCC R. 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 (1996)(discussing, *inter alia*, Rule 13).

The evidence adduced at the hearing shows that Claimant has taken no action in pursuit of her claim since the filing of her Form AR-C on May 4, 2023. Moreover, she failed to appear on the hearing to argue against dismissal of the claim, despite the evidence showing that both she and Respondents were provided reasonable notice of the Motion to Dismiss and of the hearing thereon. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the applicability of Ark. Code Ann. § 11-9-702(d) (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 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

POLK – H302115

find that the dismissal of this claim should be and hereby is entered *without prejudice*.¹

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).