

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H400889**

<b>RICKY L. PRICE, DDS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>KIRKPATRICK HOLDINGS, LLC, EMPLOYER</b>	<b>RESPONDENT</b>
<b>CINCINNATI INDEMN. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED DECEMBER 16, 2024**

Hearing before Administrative Law Judge O. Milton Fine II on December 13, 2024, in Forrest City, St. Francis 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 13, 2024, in Forrest City, 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 29 pages.

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The record shows the following procedural history:

Per the First Report of Injury or Illness filed on February 6, 2024, Claimant purportedly suffered an injury to his head at work on November 27, 2023, when he stood up and struck a light fixture. According to the Form AR-2 that was also filed on February 7, 2024, Respondents controverted the claim on the basis that the medical records “showed health issues that are not related to the work event.”

On March 11, 2024, the Commission received a handwritten letter from Claimant that reads in pertinent part:

Re: Claim Denial

Claim #H400889  
DOI: 11/27/23

Please proceed with the appeal/hearing in the above referenced claim.

Thank you,

/s/ Ricky L. Price DDS

Dr. Ricky L. Price

He responded to a questionnaire sent to him by the Commission’s Legal Advisor Division. Therein, he represented that while the amount in dispute in his claim was in excess of \$2,500.00, he nonetheless wanted to attempt mediation. Respondents’ counsel, however, informed the Commission that her clients were not willing to mediate the matter. Because of the failure to set up a mediation conference, the Clerk of the Commission was requested to reassign the file to an administrative law judge.

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Per this request, the file was assigned to me on April 9, 2024. I issued prehearing questionnaires to the parties. Claimant filed a response thereto on May 20, 2024; and Respondents followed suit on June 10, 2024. Claimant sent me a handwritten letter dated June 11, 2024, received on June 14, 2024, that reads:

May I request a continuance to have more time to acquire documents & to have my follow-up visits with my Neurologist & Cardiologist before proceeding. Thank you.

I interpreted this as a withdrawal of his hearing request, and returned his claim file to the Commission's general files on June 14, 2024.

The record reflects that nothing further took place on the claim until September 17, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012) because Claimant (1) had not sought a hearing on his claim in the preceding six months, and (2) had not responded to discovery that had been propounded to him. My office wrote Claimant on September 18, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Wynne, Arkansas address for Claimant that was listed in the file and in his prehearing questionnaire response. A "Regina Price" signed for the certified letter on September 20, 2024; and the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On October 11, 2024, a hearing on the Motion to Dismiss was

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scheduled for December 13, 2024, at 10:30 a.m. at the St. Francis County Courthouse in Forrest City. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, “Regina Price” claimed the certified letter on October 15, 2024; and the first-class letter was, again, not returned.

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 foregoing 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.
3. The evidence preponderates that Claimant has failed to prosecute his claim under AWCC R. 099.13.

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4. The Motion to Dismiss is hereby granted; this claim for initial benefits is hereby dismissed without prejudice under AWCC R. 099.13.

### **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).

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).

No Form AR-C has been filed in this case. That is the means for filing a “formal claim.” While a Form AR-1 was filed in this case, that does not suffice to instigate a claim. I recognize, however, that other means exist to file a claim for initial benefits other than a Form AR-C. In *Cook v. Southwestern Bell Telephone Company*, 21 Ark. App. 29, 727 S.W.2d 862 (1987) the Arkansas Court of

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Appeals discussed the minimum requirements necessary for correspondence to the Commission to constitute a claim for additional compensation for the purpose of tolling the applicable Statute of Limitations. There, the court held that an attorney's correspondence notifying the Commission that he has been employed to assist a claimant in connection with unpaid benefits is sufficient to state a claim for additional compensation where the correspondence also lists the claimant's name, the employer's name and the Commission file number. *See also Garrett v. Sears Roebuck and Company*, 43 Ark. App. 37, 858 S.W.2d 146 (1993). My review of the Commission's file discloses a document sufficient to constitute a claim for initial benefits under *Cook, supra*. That document is Claimant's March 11, 2024, hearing request—discussed above.

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 his claim because he has taken no further action in pursuit of it (including appearing at the December 13, 2024, hearing to argue against its dismissal) since he withdrew his hearing request on June 11, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the argument made under § 11-9-702 will not be addressed.

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

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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 with prejudice. But based on the foregoing, I find that the dismissal of this claim should be and hereby is entered *without prejudice*.<sup>1</sup>

#### **IV. CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby dismissed *without prejudice*.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge

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<sup>1</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).