

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H407792**

CHRISTINA D. PRUITT, EMPLOYEE	CLAIMANT
RITE OF PASSAGE, INC., EMPLOYER	RESPONDENT
GREAT AMERICAN ALLIANCE INS. CO., CARRIER	RESPONDENT

OPINION FILED JULY 31, 2025

Hearing before Administrative Law Judge O. Milton Fine II on July 31, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Jason M. Ryburn, Ryburn Law Firm, Attorneys 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 July 31, 2025, 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. 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 11 pages.

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The record shows the following procedural history:

Per the First Report of Injury or Illness that was filed on December 12, 2024, Claimant purportedly suffered an injury at work on November 19, 2024, when a co-worker shared a piece of candy that contained THC and Ecstasy. According to the Form AR-2 that was filed on December 13, 2024, Respondents controverted the matter in its entirety.

On December 2, 2024, Claimant filed a Form AR-C. Therein, Claimant requested the full range of initial benefits in connection with her alleged poisoning injury. Respondents' counsel entered his appearance on December 20, 2024.

The record reflects that nothing further took place on the claim until June 2, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim because “[n]o efforts to prosecute the claim have been made.” The file was assigned to me on that same date; and also on June 2, 2025, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Bryant, Arkansas address¹ for Claimant that was listed in the file and on her Form AR-C. The certified letter was returned to the Commission, unclaimed, on July 25, 2025; but the first-class letter was not returned. Regardless, no response to the motion was forthcoming from her. On

¹The very recently returned certified letter bears the notations “UNDELIVERABLE AS ADDRESSED – UNABLE TO FORWARD” and “NOTIFY SENDER OF NEW ADDRESS . . . 1501 CHRIS DR BENTON AR 72015-3224.” When this came to the attention of my office, Claimant was contacted by telephone. She confirmed the new address and that, while she had received the hearing notice, but did not plan on attending the hearing.

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June 24, 2025, a hearing on the Motion to Dismiss was scheduled for July 31, 2025, at 12:00 p.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, the United States Postal Service could not confirm whether the certified mailing had been claimed. But once again, the first-class mailing was 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 AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

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; this claim 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).

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 July 31, 2025, hearing to argue against its dismissal) since the filing of her Form AR-C on December 2, 2024. Thus, the

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evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the applicability of § 11-9-702(a)(4) is moot and 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 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. Based on the foregoing, I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.²

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.

O. MILTON FINE II
Chief Administrative Law Judge

²“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).