

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G907048

MARTIN RAMOS-FRIAS, EMPLOYEE	CLAIMANT
THOMPSON CONST. GROUP, INC., EMPLOYER	RESPONDENT
ZURICH AMERICAN INS. CO., CARRIER	RESPONDENT

OPINION FILED MARCH 24, 2021

Hearing before Chief Administrative Law Judge O. Milton Fine II on March 19, 2021 in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*.¹

Respondents represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a motion to dismiss filed by Respondents. A hearing on the motion was conducted on March 19, 2021 in Jonesboro, Arkansas. Claimant, who is *pro se*, failed to appear. Respondents No. 1 were represented at the hearing by Mr. Randy P. Murphy, Attorney at Law, of Little Rock, Arkansas. The record consists of the Commission's file—which, without objection, has been incorporated herein in its entirety by reference.

¹Claimant is a Spanish-speaking individual; English is his second language. See *infra*. Ms. Shannon Tanner, a certified Spanish language interpreter, was present at the hearing to serve as his interpreter. But since Claimant failed to appear, Ms. Tanner was not sworn under Ark. Code Ann. § 25-15-101 (1987).

The evidence reflects that per the First Report of Injury or Illness filed on October 25, 2019, Claimant purportedly injured his head at work on October 8, 2019. According to the Form AR-2 that was also filed on October 25, 2019, Respondents accepted this injury as compensable and not only paid medical benefits pursuant thereto, but continued to pay his wages.

On December 6, 2019, Claimant (through then-counsel Laura Beth York) filed a Form AR-C, asking for a full range of initial and additional benefits. He alleged that he was struck by a metal beam at work and sustained injuries not only to his head, but also to his back, right ear, right eye, right hip, bilateral shoulders, left shin, and “other whole body.” No hearing request accompanied this form. In response, Respondents wrote the Commission on December 9, 2019, stating: “Our position on compensability has not changed in this case since the initial filing. This claim is a compensable claim and all eligible benefits are being paid.” Respondents’ counsel made an entry of appearance on January 31, 2020.

York’s co-counsel Kolton Jones on June 1, 2020 filed a motion to withdraw from his representation of Claimant. In an order entered on July 16, 2020, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects on November 17, 2020, Respondents filed the instant motion to dismiss. Therein, they argued that dismissal was warranted under AWCC R. 099.13 because “[t]here has been no hearing requested.” On November 19, 2020, the Commission wrote Claimant, giving him 20 days to

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respond to the motion to dismiss. The letter was sent via first-class and certified mail to the address for Claimant contained in the file and on his Form AR-C. The certified letter was claimed on November 28, 2020 by Claimant's brother, Jose Ramos-Frias; and the letter that was sent via first-class mail was never returned. Nonetheless, no response by Claimant was forthcoming. On December 14, 2020, a hearing on the motion was scheduled for January 29, 2021 in Marion. The notice was sent to Claimant by first-class and certified mail. The certified letter was claimed on December 22, 2020; and the first-class letter was not returned.

Claimant appeared at that hearing and confirmed that he had received the hearing notice. However, he asked for a continuance of the hearing because English is his second language and he desired an Spanish language interpreter to be present. This request was granted. On February 1, 2021, the hearing was initially reset for March 26, 2021 in Marion; however, on February 26, 2021, it was rescheduled for March 19, 2021 in Jonesboro. The initial notice was sent via first-class and certified mail, while the latter was sent by first-class mail only. There is no record of Claimant claiming the certified mail setting the March 26, 2021 hearing; but there is likewise no indication that the items correspondence sent by way of first-class were returned to the Commission. Consequently, the evidence preponderates that Claimant received notice of the March 19, 2021 hearing.

The hearing on the motion to dismiss proceeded as scheduled on March 19, 2021. Again, Claimant failed to appear. But Respondents appeared through counsel and argued for dismissal of the action under AWCC R. 099.13.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, I hereby make the following findings of fact and conclusions of law 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. The evidence preponderates that Claimant has failed to prosecute this 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 provides:

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). In turn, Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may**, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

(Emphasis added) Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” 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 his claim because he has taken no further action in pursuit of it (including appearing at the March 19, 2021 hearing to argue against its dismissal) since the filing of his Form AR-C on December 6, 2019. Thus, the evidence preponderates that dismissal is warranted under Rule 099.13.

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 Work. 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*

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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 with prejudice. But based on the above authorities, I find that the dismissal of the claim should be and hereby is entered *without prejudice*.

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