

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H205333**

JAMES F. REESE, EMPLOYEE	CLAIMANT
CRACKER BARREL OLD COUNTRY STORE, SELF-INSURED EMPLOYER	RESPONDENT
CANNON COCHRAN MGMT. SVCS., INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 13, 2023

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

Claimant *pro se*.

Respondents represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on Respondents' Motion to Dismiss. The record consists of Commission Exhibit 1, the February 7, 2023, Prehearing Order.

This matter was set for hearing on the merits of the claim for April 12, 2023, at 9:30 a.m. at the Commission in Little Rock. The following issues were to have been litigated:

1. Whether Claimant sustained compensable injuries to his upper and lower back, right arm, and right hand by specific incident, or in the alternative, by gradual onset.

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2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.

All other issues were reserved. Claimant was to testify. Respondents intended to call Leanna Bearden—who appeared at the hearing. However, Claimant did not appear. Several minutes had elapsed after the appointed time for the hearing, I opened the record to make note of his failure to appear and to hear from Respondents. Review of the record confirmed that the Commission utilized the correct address in sending Claimant a copy of the Prehearing Order. I noted that I had observed Claimant at the Commission in the past, when he had testified in the same courtroom in a hearing on a joint petition of a different claim; and that he had been personally advised during the February 6, 2023, prehearing telephone conference of the date, time, and location of the hearing on this claim.

Based upon Claimant's non-appearance, Respondents moved for a dismissal of the claim pursuant to AWCC R. 099.13. I took the motion under advisement, and noted before closing the record that it was approximately 30 minutes past when the full hearing had supposed to begin.

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):

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. Claimant has failed to prosecute this claim.
3. Claimant was provided reasonable notice of the April 12, 2023, hearing, at which time the Motion to Dismiss was heard.
4. Dismissal of this claim is warranted under AWCC R. 099.13.
5. This claim is hereby dismissed *without prejudice* under AWCC R. 099.13.

III. DISCUSSION

Under AWCC R. 099.13,

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).

As shown by the evidence, Claimant without good cause failed to appear at the merits hearing on this claim, where he was to have testified and had the burden of proof on the stated issues in the Prehearing Order. He received reasonable notice of this hearing from the Commission. Claimant was unready, without justification, to litigate his claim. The evidence thus shows that he has failed to prosecute his claim, and that reasonable notice of the proceeding was provided to him. No evidence has been brought to the attention of the

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Commission that would excuse his failure to appear at his own hearing. Hence, dismissal of the instant claim is justified under Rule 13. Respondents' motion is hereby granted.

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 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)). Respondents at the hearing asked for a dismissal with prejudice. But based on the above authorities, I find that the dismissal of this claim should be and hereby is entered *without prejudice*.^a

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge

^a"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).