

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301255**

SHARICE RODDY, EMPLOYEE	CLAIMANT
CORE MARK AMI ARTIC EAST, EMPLOYER	RESPONDENT
INDEMNITY INS. CO. OF NO. AMER., CARRIER	RESPONDENT

OPINION FILED JANUARY 12, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on
January 12, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Rick Behring, Jr., 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 12, 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 without objection were the following: Commission Exhibit 1 and Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 17 and 27 pages, respectively.

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The record reveals the following procedural history:

The First Report of Injury or Illness, filed on February 23, 2023, reflects that Claimant purportedly suffered an injury to multiple body parts on May 26, 2022, from being pinned between a pallet jack and a rack. Per the Form AR-2 filed on March 14, 2023, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

On April 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 concerning her alleged injuries. No hearing request accompanied this filing. Later, on August 2, 2023, York moved to withdraw from her representation of Claimant. In an Order entered on August 25, 2023, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action was taken on the case until October 23, 2023, when Respondents filed the instant Motion to Dismiss under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13, along with a brief in support thereof. On October 24, 2023, 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 address for Claimant listed in the file and on her Form AR-C. While the United States Postal Service was unable to verify whether Claimant signed for the certified letter, the first-class correspondence was returned with the notation "NOT DELIVERABLE AS ADDRESSED." Regardless, no response by Claimant to the motion was forthcoming.

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On November 14, 2023, a hearing on Respondents' motion was scheduled for January 12, 2024, at 10:30 a.m. at the St. Francis County Courthouse in Forrest City. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. Again, it could not be verified whether Claimant signed for the certified letter. But this time, the first-class letter was not returned.

The hearing proceeded as scheduled on January 12, 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 April 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(a)(4) (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). 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*.”

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(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 without prejudice. Based on the above authorities, I agree and 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).