

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H305120**

MELVIN RUIZ, EMPLOYEE	CLAIMANT
PEDRO LOPEZ, EMPLOYER	RESPONDENT
TECHNOLOGY INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 2, 2024

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 2, 2024,
in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. William C. Frye, Attorney at Law, North 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 May 2, 2024, 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 without objection was Commission Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 18 pages.

The record reveals the following procedural history:

The First Reports of Injury or Illness, filed on August 28 and September 8, 2023, reflect that Claimant purportedly suffered injuries to his leg, knee, and ribs

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at work on July 25, 2023. Per the Forms AR-2 filed on August 29 and September 6, 2023, Respondents controverted the claim in its entirety—initially because Claimant purportedly was not an employee of Respondent Lopez, and later purportedly because of a lack of medical documentation of an injury.

On August 11, 2023, through then-counsel Mark Peoples, Claimant filed a Form AR-C, alleging that he was entitled to the full range of initial benefits from Affordable Residential Roofing and its insurer for his alleged work-related injuries. In an amended Form AR-C filed on August 29, 2023, Peoples changed the name of the alleged employer to Respondent Lopez. He took pains to represent that his client was not yet requesting a hearing on his claim. Respondents' counsel confirmed to the Commission on August 29 and September 14, 2023, that his clients were controverting the claim in its entirety.

On December 18, 2023, Peoples moved to withdraw from his representation of Claimant. In an Order entered on January 9, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action was taken on the case until February 28, 2024, when Respondents filed the instant Motion to Dismiss, contending that “[n]o action has been taken since the AR-C was filed in August of 2023.” On March 4, 2024, 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 Little Rock address for Claimant listed in the file and on his Forms AR-C. The certified letter was returned to the Commission, undelivered,

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on March 29, 2024; but the first-class correspondence was not returned to the Commission. However, no response by Claimant to the motion was forthcoming.

On March 27, 2024, a hearing on Respondents' motion was scheduled for May 2, 2024, at 9:30 a.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, both the first-class and certified letters were returned—on April 1 and 2, 2024, respectively.

The hearing proceeded as scheduled on May 2, 2024. Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13.

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 his 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 his claim since the filing of his amended Form AR-C on August 29, 2023. Moreover, he failed to appear on the hearing to argue against dismissal of the claim, despite the evidence showing that both he 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.

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. I agree and

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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).