

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H400361**

ALEXIA SANDIDGE, EMPLOYEE	CLAIMANT
WENDY'S OLD FASHIONED HAMBURGERS, EMPLOYER	RESPONDENT
TRAVELERS CASUALTY INS. CO. OF AMER., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 12, 2024

Hearing before Administrative Law Judge O. Milton Fine II on February 6, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Amy C. Markham, Attorney 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 February 6, 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. In order to address adequately this matter under 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”), and without objection, I have blue-backed to the record documents from the Commission’s file on the claim, consisting of 17 pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010

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Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on February 1, 2024, Claimant purportedly suffered injuries at work on November 30, 2023, when she slipped and fell onto a freshly-mopped floor. According to the Form AR-2 that was also filed on February 1, 2024, Respondents controverted the claim on the basis of the alleged lack of objective medical findings of an injury.

On January 18, 2024, through then-counsel Wesley Cottrell, Claimant filed a Form AR-C. Therein, she alleged that she was entitled to the full range of initial and additional benefits as a result of injuries to her “shoulders, back, and body as a whole” that she purportedly sustained in the fall. Accompanying this form was a completed pre-hearing questionnaire.¹ Respondents’ counsel entered her appearance before the Commission by way of a letter received on February 7, 2024. In that same correspondence, she represented that her clients’ position on the claim had not changed.

On April 9, 2024, Cottrell moved for permission from the Commission to withdraw from his representation of Claimant. In an Order entered on May 3, 2024, under AWCC Advisory 2003-2, the Full Commission granted the motion.

¹The prehearing questionnaire’s filing notwithstanding, the record does not show that Claimant’s then-counsel affirmatively requested a hearing; and the questionnaire in and of itself was not treated as such by the Clerk of the Commission.

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The record reflects that nothing further took place on this claim until November 22, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012). Therein, they alleged that more than six months had elapsed since the filing of the claim without a hearing request being made by Claimant. My office wrote Claimant on November 25, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Conway, Arkansas address of Claimant as shown on her Form AR-C. Claimant signed for the certified letter on November 27, 2024; and the first-class letter was not returned. However, no response to the Motion to Dismiss was forthcoming from Claimant.

On December 17, 2024, a hearing on the Motion to Dismiss was scheduled for February 6, 2025, at 9:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address as before. Claimant again signed for the certified letter—this time on December 18, 2024. And as before, the first-class letter was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on February 6, 2025. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the aforementioned authorities.

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

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(4) 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.

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 February 6, 2024, hearing to argue against its dismissal) since the filing of her Form AR-C on January 18, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702(a)(4).

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

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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 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 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).