

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NOS. H302793 & H302794**

KEITH D. SORRELLS, EMPLOYEE	CLAIMANT
LONOKE COUNTY JUDGE, SELF-INSURED EMPLOYER	RESPONDENT
ASSOC. ARK. COUNTIES RISK MGMT. SVCS., THIRD-PARTY ADMIN.	RESPONDENT

OPINION FILED MARCH 8, 2024

Hearing before Administrative Law Judge O. Milton Fine II on March 7, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Carol Lockard Worley, 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 March 7, 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 was Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim, consisting of one index page and ten numbered pages thereafter. Also, 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

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claim, consisting of two pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, ___ S.W.3d ___, these documents have been served on the parties in conjunction with this opinion.

The record reflects the following procedural history:

H302793. Per the First Report of Injury or Illness filed on May 3, 2023, Claimant purportedly suffered an injury to his lower back at work on March 23, 2023, when he was removing a large storage bin from a shelf. According to the Form AR-2 that was filed on May 4, 2023, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On May 1, 2023, Claimant filed a Form AR-C. Therein, he alleged that he was entitled to medical benefits as a result of the compensable injury that he allegedly sustained. No hearing request accompanied this filing.

H302794. Per the First Report of Injury or Illness filed on May 3, 2023, Claimant purportedly suffered another injury to his lower back at work on April 24, 2023, when he was escorting an inmate who became disruptive and attempted to pull away from him. According to the Form AR-2 that was also filed on May 3, 2023, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On May 1, 2023, Claimant filed a Form AR-C. Therein, he alleged that he was entitled to medical treatment. As before, no hearing request accompanied this filing.

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The record reflects that nothing further took place on either claim until January 9, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claims under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). My office wrote Claimant on January 12, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Jacksonville address of Claimant listed in the files and on his Forms AR-C. Someone with an illegible signature claimed the certified letter on January 18, 2024, and the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On February 2, 2024, a hearing on the Motion to Dismiss was scheduled for March 7, 2024, at 11:00 a.m. at the Commission in Little Rock. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, the certified letter was claimed by someone with an illegible signature on February 3, 2024; and as was the case previously, the first-class letter was not returned to the Commission.

The hearing on the Motion to Dismiss proceeded as scheduled on March 7, 2024. 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 his two claims under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; these two claims for additional benefits are 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).

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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 claims—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 his two claims because he has taken no further action in pursuit of them (including appearing at the March 7, 2024, hearing to argue against its dismissal) since the filing of his Forms AR-C on May 1, 2023. Thus, the evidence preponderates that dismissal of both is warranted under Rule 13. Because of this finding, it is unnecessary to address the application of § 11-9-702.

That leaves the question of whether the dismissal of the claims 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 these claims should be and hereby is entered *without prejudice*.¹

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, these two claims for additional benefits are 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).