BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H507584

JAMES E. WALKER, EMPLOYEE **CLAIMANT**

PENSKE TRUCKING LEASING CO., LP.,
EMPLOYER **RESPONDENT**

OLD REPUBLIC INS. CO.,
CARRIER **RESPONDENT**

OPINION FILED OCTOBER 15, 2026

Hearing before Administrative Law Judge O. Milton Fine II on October 15, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. David C. Jones, 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 October 15, 2026, 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 were Commission Exhibit 1 (s*ee* 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 Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim.

y The record reflects the following procedural history:

On December 5, 2025, through then-counsel Daniel A. Webb, Claimant filed a Form AR-C. The boxes on the form were checked to indicate that Claimant was seeking initial and additional benefits in connection with his alleged lower back injury, which he claim he sustained on September 13, 2025, while pushing a car engine at work. In an email accompanying this filing, Webb requested a hearing on the claim. The claim was assigned to me on December 8, 2025; and on that same day, I issued prehearing questionnaires to the parties. Claimant filed a timely response thereto on December 24, 2025; and Respondents followed suit on January 14, 2026. A prehearing telephone conference was set for February 23, 2026. However, in an email to my office on January 21, 2026, Webb advised that Claimant had informed him that he no longer wished to proceed with his claim. Based on this, the conference was cancelled, and the file was returned to the Commission's general files.

On July 10, 2026, Webb moved to withdraw from the case. In an Order entered on July 24, 2026, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until August 6, 2026. On that date, Respondents filed the instant motion, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012) and 11 C.A.R. § 25-110(d) due Claimant's failure to request a hearing in this matter or take any other action to pursue it in the previous six months. The file was reassigned to me on August 10,

2026; and on August 11, 2026, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by certified and first-class mail to the North Little Rock, Arkansas address of Claimant listed in the file and on his Form AR-C. Someone with an illegible signature claimed the certified letter on August 13, 2026; and the first-class mailing was not returned. However, no response from him to the motion was forthcoming. On September 2, 2026, a hearing on the Motion to Dismiss was scheduled for October 15, 2026, at 12:00 p.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 in North Little Rock as before. In this instance, the certified letter went unclaimed and was returned to the Commission on September 28, 2026; but once again, the notice sent by first-class mail was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on October 15, 2026. 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 claim under 11 C.A.R. § 25-110(d).

4. The Motion to Dismiss is hereby granted; this claim is hereby dismissed without prejudice under 11 C.A.R. § 25-110(d).

III. DISCUSSION

11 C.A.R. § 25-110(d) (formerly 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).

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 his claim because he has taken no further action in pursuit of it (including appearing at the October 15, 2026, hearing to argue against its dismissal)

since his file was returned to the Commission's general files, following the withdrawal of his hearing request, on January 21, 2026. Thus, the evidence preponderates that dismissal is warranted under § 25-110(d). Because of this finding, the arguments made under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012) are moot and will not be addressed.

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 find that the dismissal of this claim 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, this claim for additional benefits is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

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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).