

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H204773**

BYRON WILLCUTT, EMPLOYEE	CLAIMANT
HYTROL CONVEYOR CO., INC., SELF-INSURED EMPLOYER	RESPONDENT
CANNON COCHRAN MGMT. SVCS., INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 24, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on April 21, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Mr. Justin Parkey, Attorney at Law, Jonesboro, Arkansas.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing on the motion was conducted on April 21, 2023, in Jonesboro, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. At Respondents' request, the Commission's file on the claim has been incorporated herein in its entirety by reference.

The record reveals the following procedural history:

Claimant, through then-counsel Laura Beth York, filed a Form AR-C on July 1, 2022, asking for the full range of initial and additional benefits and alleging

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that he injured “his head, right shoulder, and other whole body” when he lost consciousness and fell to the ground at work on March 16, 2022. Per the Form AR-2 filed on July 13, 2022, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

On September 6, 2022, York moved to withdraw from the case. In an order entered on September 16, 2022, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action took place on this claim until January 17, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal of the claim was warranted under Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012), and alleged that Claimant has never made a bona fide hearing request to the Commission. On January 20, 2023, my office wrote Claimant, asking for a response to the motion within 20 days. This certified letter was returned to my office, unclaimed, on February 21, 2023; but the first-class letter containing the same correspondence, sent to the address supplied to the Commission by Claimant, was not returned. Nonetheless, no response from him was forthcoming. On March 2, 2023, a hearing on Respondents’ motion was scheduled for April 21, 2023, at 1:30 p.m. at the Craighead County Courthouse in Jonesboro, Arkansas. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, the United States Postal Service was unable to verify whether Claimant had claimed the certified letter. But the first-class letter was

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never returned. Thus, the evidence preponderates that the notice reached its proper destination.

The hearing proceeded as scheduled on April 21, 2023. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the aforementioned authorities as well as 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. Respondents have proven by a preponderance of the evidence that Claimant has failed to prosecute his claim.
4. Respondents have proven by a preponderance of the evidence that this claim should be dismissed under AWCC R. 099.13.
5. The Motion to Dismiss is hereby granted.
6. This 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).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that this claim should be dismissed. 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 April 21, 2023, hearing to argue against its dismissal) since the filing of his Form AR-C on July 1, 2022. Thus, dismissal is warranted under Rule 13. Respondents have met their burden of proof in this matter. Because of this finding, it is unnecessary to address the application of § 11-9-702 here.

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss

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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*.” (Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). At the hearing, Respondents requested a dismissal with prejudice. But based on the foregoing, I 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 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).