

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H109610**

<b>CANDACE M. WILLIAMS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>PRYSMIAN GROUP, EMPLOYER</b>	<b>RESPONDENT</b>
<b>TRAVELERS INDEMN. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 18, 2023**

Hearing before Chief Administrative Law Judge O. Milton Fine II on July 14, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Amy C. Markham, 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 July 14, 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:

Per the First Report of Injury or Illness filed on December 14, 2021, Claimant purportedly injured her ankle at work on March 22, 2021. According to

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the Form AR-2 that was filed on December 15, 2022, Respondents accepted the claim as a medical-only one and paid benefits pursuant thereto.

Claimant filed a Form AR-C on December 9, 2021, asking for temporary total disability benefits and an attorney's fee. Therein, she alleged that when she injured her ankle, she sustained "some ligament damage." In correspondence to the Commission on January 10, 2022, Respondents' counsel entered her appearance and represented that her clients' position that had been expressed in the Form AR-2 had not changed.

On January 7, 2022, Respondents propounded discovery to Claimant. This discovery, in the form of interrogatories and request for production of documents, went unanswered. On May 12, 2022, Respondents moved for an order compelling Claimant to respond to the discovery. On June 1, 2022, then-Administrative Law Judge Terry Don Lucy entered this order. However, when Claimant failed to comply as directed, Judge Lucy returned the file to the Commission's general files.

The record reflects that no further action took place on this claim until April 14, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal of the claim was warranted under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702(a)(4)<sup>1</sup> (Repl. 2012), and alleged that Claimant has not made a bona fide hearing request to the Commission within the past six months.

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<sup>1</sup>Since Respondents accepted this claim and paid medical benefits, the applicable provision is § 11-9-702(d).

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The file was assigned to Administrative Law Judge Steven Porch on April 17, 2023. On April 27, 2023, his office wrote Claimant at the address she supplied on the Form AR-C, asking for a response to the motion within 20 days. This certified letter was claimed by “Lesley Williams” on May 1, 2023; and the first-class letter was not returned. Nonetheless, no response from Claimant was forthcoming. On May 24, 2023, a hearing on Respondents’ motion was scheduled for July 14, 2023, at 11:00 a.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, Claimant signed for the certified letter on May 27, 2023. As before, the first-class letter was not returned. Thus, the evidence preponderates that the notice reached its proper destination.

The hearing proceeded as scheduled on July 14, 2023, before the undersigned. 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.

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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 her 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)

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Claimant has failed to pursue her claim because she has taken no further action in pursuit of it (including appearing at the July 14, 2023, hearing to argue against its dismissal) since the filing of her Form AR-C on December 9, 2021. 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.

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). 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)). Based on the foregoing, I find that the dismissal of this claim should be and hereby is entered *without prejudice*.<sup>2</sup>

#### **IV. CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim is hereby dismissed *without prejudice*.

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<sup>2</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).

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**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge