

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H206747**

<b>SUSAN G. WILLIAMS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>TRUMANN SCH. DIST., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>ARK. SCH. BDS. ASSN., THIRD-PARTY ADMINISTRATOR</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 28, 2023**

Hearing before Administrative Law Judge O. Milton Fine II on August 18, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney at Law, Jonesboro, Arkansas (neither appearing).

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss by Respondents. A hearing on the motion was conducted on August 18, 2023, in Jonesboro, Arkansas. No testimony was taken in the case. Neither Claimant nor her counsel appeared at the hearing. Without objection, the Commission's file on the claim has been incorporated herein in its entirety by reference. Admitted into evidence was Respondents' Exhibit 1—forms, pleadings and correspondence related to the claim—consisting of one (1) index page and thirteen (13) numbered pages thereafter.

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The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on September 20, 2022, Claimant purportedly injured her left foot at work on September 16, 2022. According to the Form AR-2 that was filed on September 29, 2022, Respondents accepted the injury as compensable and paid medical and temporary total disability benefits pursuant thereto.

Claimant has not filed a Form AR-C in this matter. However, on November 8, 2022, she (at that time *pro se*) emailed the Commission:

My name is Susan Grace Williams. I am requesting a hearing for additional workman's compensation benefits. The claim is over \$2,500 and I am willing to go to mediation.

This communication is legally sufficient to constitute a claim for additional benefits under Ark. Code Ann. § 11-9-702(c) (Repl. 2012), which reads:

A claim for additional compensation must specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.

*See White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640. She later withdrew her hearing request that same day. But just two days later, on November 10, 2022, she renewed the request.

Respondents' counsel entered her appearance on their behalf before the Commission on November 16, 2022. Claimant's counsel followed suit on November 28, 2022. On November 18, 2022, Respondents indicated that they were willing to mediate the matter. After months of unsuccessful efforts to set up

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a mediation conference, the file was returned to the Commission's general files on February 20, 2023.

No further activity occurred on this claim until May 10, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they alleged that dismissal of the claim was called for under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 because Claimant had not sought a hearing before the Commission over the previous six months. On May 30, 2023, my office wrote both Claimant and her attorney, giving them 20 days to respond to the motion. However, no response to the motion was forthcoming.

On June 27, 2023, I scheduled a hearing on the Motion to Dismiss for August 18, 2023, at 11:30 a.m. at the Craighead County Courthouse in Jonesboro. The hearing notice was sent not only to the attorneys of record, but to Claimant at the address for her listed in the file. She or someone on her behalf signed for the certified mail on June 29, 2023; and the first-class mail was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on August 18, 2023. Neither Claimant nor her attorney made an appearance. 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 claim.
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 this claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; the claim 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).

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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 this 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 the claim because she has taken no further action in pursuit of it—including appearing at the August 18, 2023, hearing to argue against its dismissal—since the November 10, 2022, hearing request. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, it is unnecessary to address the applicability of Ark. Code Ann. § 11-9-702(d) (Repl. 2012).

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*.”

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(Emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. Based on the above authorities, I agree and find that the dismissal of the claim should be and hereby is entered without prejudice.

#### **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.**

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O. MILTON FINE II  
Chief Administrative Law Judge