

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H300913**

LAKENYA D. YOUNG, EMPLOYEE	CLAIMANT
CITY OF OSCEOLA, SELF-INSURED EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, THIRD-PARTY ADM'R	RESPONDENT

OPINION FILED SEPTEMBER 22, 2025

Hearing before Administrative Law Judge O. Milton Fine II on September 19, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Mary K. Edwards, Attorney at Law, North 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 September 19, 2025, 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. Admitted into evidence were Commission Exhibit 1 (see 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, forms, pleadings, and correspondence related to this claim, consisting of 22 and 12 pages, respectively.

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The record shows the following procedural history:

Per the First Report of Injury or Illness that was filed on February 10, 2023, 2025, Claimant purportedly suffered a fractured right ankle at work on April 17, 2024, when she slipped on ice and fell while reading water meters. According to the Form AR-2 that was filed on February 16, 2023, Respondents accepted the claim as compensable and paid medical and indemnity benefits pursuant thereto.

On July 15, 2024, through then-counsel Mark Peoples, Claimant filed a Form AR-C. Therein, she requested the full range of additional benefits in connection with her right ankle injury. In electronic correspondence accompanying this filing, Peoples wrote: “I am not asking for a hearing at this time.” In response to this, Respondents sent a letter to the Commission on July 17, 2024, reiterating that they had accepted the claim.

On July 16, 2024, Claimant through Peoples requested that she be granted a one-time change of physician to Dr. Michael Haughey. However, this request was withdrawn on December 10, 2024.

Peoples moved to withdraw from his representation of Claimant on March 27, 2025. In an Order entered on April 30, 2025, the Full Commission granted the motion pursuant to AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until June 26, 2025. On that date, Respondents’ counsel entered her appearance and filed the instant motion, asking for dismissal of the claim because Claimant has not

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made a bona fide hearing request on the claim since its filing. Also on June 26, 2025, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Osceola address for Claimant that was listed in the file and on her Form AR-C. The certified letter was returned to the Commission, unclaimed, on July 21, 2025; but the first-class letter was not returned. Regardless, no response to the motion was forthcoming. On August 5, 2025, a hearing on the Motion to Dismiss was scheduled for September 19, 2025, at 1:00 p.m. at the Craighead County Courthouse in Jonesboro. The certified mailing of the Notice of Hearing to Claimant was returned to the Commission, unclaimed, on September 2, 2025; but the first-class mailing was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under both AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702(d) (Repl. 2012).

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):

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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 her 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). In turn, Ark. Code Ann. § 11-9-702(d) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subsection (b) of this section.

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

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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 her claim because she has taken no steps to pursue it (including appearing at the September 19, 2025, hearing to argue against its dismissal) since the filing of her aborted change-of-physician request on July 16, 2024. Thus, the evidence preponderates that dismissal of the claim is warranted under 11 C.A.R. § 25-110(d). Because of this finding, the applicability of § 11-9-702(d) is 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. Based on

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the foregoing, 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 initial benefits 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).