

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G607898**

**LOUISE ANDERSON, EMPLOYEE**

**CLAIMANT**

**UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES,  
EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 11, 2023**

Hearing before Administrative Law Judge Steven Porch on May 9, 2023 in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*.

The Respondents were represented by Mr. Charles McLemore, Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on May 9, 2023, in Little Rock, Arkansas. Claimant, who is *pro se*, did appear. Respondents were represented at the hearing by Mr. Charles McLemore, Attorney at Law, of Little Rock, Arkansas. In addition to Respondent's argument, the record consists of the Commission's file—which has been incorporated herein in its entirety by reference and Respondents' Exhibit 1.

The evidence reflects that per the First Report of Injury or Illness, Form AR-1, was filed on August 17, 2015, Claimant purportedly injured her right leg at work on August 16, 2015 when a gurney carrying a deceased man collapsed on Claimant's right leg causing a contusion. The collapse of the gurney resulted in the corpse rolling on top of Claimant for an undisclosed amount of time until other employees removed it from on top of her.

According to Form AR-2 that was filed on November 2, 2016, Respondents accepted Claimant's leg injury as compensable. Claimant was unable to secure legal counsel to represent her on this claim when the injury occurred and when the Motion to Dismiss hearing was first scheduled. Since the accident in August 16, 2015, this case has been inactive until Respondents filed a Motion to Dismiss due to the lack of prosecution. A hearing was set for May 9, 2023, in Little Rock, Arkansas on the Motion to Dismiss. The hearing took place as scheduled.

At the hearing and as previously stated, the Claimant did appear and testify. When asked why it has taken approximately eight years to prosecute this claim, Claimant responded that she was waiting on information from her employer as to how the case was going. Claimant also stated that she was waiting to hear from the Commission regarding the status of her claim. Claimant's husband, Timothy Anderson, testified, that he assisted Claimant with completing Form AR-C. Timothy Anderson further testified that he just forgot about the claim but would periodically ask Claimant how the claim was going. In essence, I find that Claimant did not know what they were doing and decided to wait to hear from the Claimant's employer or the Commission to figure out their next steps. The Claimant did not know how to push or prosecute her claim. But ignorance of the law is no excuse. *Pro se* litigants are held to the same standards as licensed attorneys. E.g., *Arnold v. Pitts*, 2020 Ark. App. 549, 2020 Ark. App. LEXIS 615 (2020). Respondents argued for dismissal under Rule 13.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole and other matters properly before the Commission, and having had an opportunity to hear the sworn testimony of the Claimant,

I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. All parties received reasonable and timely notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents did prove by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.
4. The Motion to Dismiss should be, and hereby is, granted.

### **III. DISCUSSION**

AWCC 099.13 provides:

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).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” 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).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the

Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

After consideration of all the evidence, I find that Claimant and Respondents were given reasonable notice of the Motion to Dismiss hearing under Rule 13. I further find that Claimant has abridged this rule. Thus, I find Respondent's Motion to Dismiss should be granted *without prejudice*.

### **CONCLUSION**

Based on the findings of fact and conclusions of law set forth above, Respondents' Motion to Dismiss is hereby granted *without prejudice*.

**IT IS SO ORDERED.**

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STEVEN PORCH  
Administrative Law Judge