

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H300839**

**HEAVEN L. ALCORN, EMPLOYEE**

**CLAIMANT**

**CITY OF JONESBORO,  
EMPLOYER**

**RESPONDENT**

**MUNICIPAL LEAGUE WC PROGRAM.  
INSURANCE COMPANY/TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 31, 2023**

Hearing before Administrative Law Judge Steven Porch on October 27, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant represented herself Pro Se.

The Respondents were represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss filed by Respondents on August 11, 2023. A hearing on the motion was conducted on October 27, 2023, in Jonesboro, Arkansas. The Claimant herself was not present at the hearing. Respondents were represented at the hearing by Ms. Mary K. Edwards who argued the motion. In addition to Respondent's argument, the record consists of Respondent's Exhibit 1, non-medical documents, and the Commission's file—which has been incorporated herein in its entirety by reference.

The evidence reflects that Claimant's injury occurred on July 1, 2021, where she injured herself while exercising. Claimant developed a hernia. This incident allegedly has some connection to her employment. Since filing her Form C on February 7, 2023, this case has been inactive until Respondents filed a Motion to Dismiss due to the lack of

prosecution. A hearing was held on October 27, 2023, in Jonesboro, Arkansas on the Motion to Dismiss. As previously stated, the Claimant was not present for the hearing. The Claimant was served through both certified and first class mail. Commissions' file shows that the first class letter was sent to Claimant's last known address on September 19, 2023, and was not returned.

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

After reviewing the record as a whole and other matters properly before the Commission, 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 without prejudice.

## **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 for the Motion to Dismiss hearing under Rule 13. I further find that Claimant has abridged this rule. Thus, I find Respondent’s Motion should be granted.

### **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