

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H301768**

**JOSEPH A. BAXTER, EMPLOYEE**

**CLAIMANT**

**OVERHEAD DOOR OF LITTLE ROCK,  
EMPLOYER**

**RESPONDENT**

**BRIDGEFIELD CASUALTY INSURANCE CO.  
INSURANCE COMPANY**

**RESPONDENT**

**OPINION FILED NOVEMBER 29, 2023**

Hearing before Administrative Law Judge Steven Porch on November 28, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant represented himself Pro Se.

The Respondents were represented by Mr. Jason Ryburn, Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss filed by Respondents on November 28, 2023. A hearing on the motion was conducted on November 28, 2023, in Little Rock, Arkansas. The Claimant himself was not present at the hearing. Respondents were represented at the hearing by Mr. Jason Ryburn who argued the motion.

The evidence reflects that Claimant's injury occurred on October 18, 2022, where he injured his ribs and other whole body in a car collision. This incident allegedly has some connection to his employment. Since filing his Form C on March 16, 2023, this case has been inactive until Respondents filed a Motion to Dismiss, on September 26, 2023, due to the lack of prosecution. The Claimant was served through both certified and first

class mail. Commissions' file shows that the Claimant was served through certified mail on October 26, 2023.

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

After reviewing the record as a whole including Commission Exhibit 1, non-medical documents, 5 pages and Commission Exhibit 2, the Notice of Hearing, 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. The Claimant has not prosecuted this claim since the filing of his Form C on March 16, 2023, over eight months ago. Moreover, the Claimant did not show up for the Motion to Dismiss hearing after receiving ample notice. Thus, I find by the preponderance of the evidence that Respondents' 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