

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H401705**

KARISHA BROWN, EMPLOYEE	CLAIMANT
CENTRAL ARK. OPHTHALMOLOGY, EMPLOYER	RESPONDENT
UNION INS. CO. OF PROVIDENCE, CARRIER	RESPONDENT

OPINION FILED FEBRUARY 4, 2025

Hearing before Chief Administrative Law Judge O. Milton Fine II on January 30, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on Respondents' Motion to Dismiss. A hearing on the motion was conducted on January 30, 2024, in Little Rock, Arkansas. Claimant appeared in person and testified. Respondents were represented at the hearing by Ms. Karen H. McKinney, Attorney at Law, of Little Rock, Arkansas. In addition to Claimant's testimony, the record consists of the following exhibit: Respondents' Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of eight pages. Also, in order to address adequately this matter under 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 without objection, I have blue-backed to the record forms, pleadings, and correspondence from the Commission's file on

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the claim, along with the post-hearing briefs of the parties, totaling 24 pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

The evidence reflects that on March 8, 2024, Claimant filed a Form AR-C, alleging that she was entitled to initial medical and temporary partial disability benefits for her injuries she allegedly suffered on October 17, 2023. She related:

Attacked and bitten by Dr. Roza[']s [b]ig [d]og walking down hallway to my desk after delivering patient[']s to the [d]octor[']s offices. Dog jumped on my back[,] scratching me[,] pushing me[,] and bit my back of [r]ight arm.

Per the First Report of Injury or Illness filed on March 21, 2024, Claimant purportedly suffered injuries at work on October 17, 2023, while returning patient charts. According to the Form AR-2 that was also filed on March 21, 2024, Respondents controverted the claim in its entirety.

The record reflects that no further activity occurred on this claim until October 10, 2024, when Respondents filed the instant Motion to Dismiss under AWCC R. 099.13 and Ark. Code Ann. § 11-9-702 (Repl. 2012). Therein, they alleged that more than six months had elapsed since the filing the Form AR-C without Claimant requesting a hearing thereon. The file was reassigned to me on October 11, 2024; and on October 14, 2024, my office wrote Claimant, requesting a response to the motion within 20 days. The letter was sent to Claimant by first-class and certified mail to the address she listed on the Form

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AR-C: 1502 Green Mountain Drive, Little Rock, Arkansas 72211. However, both items of correspondence were returned to the Commission with the notation “INSUFFICIENT ADDRESS.” (Emphasis in original) Unsurprisingly, no response from Claimant was forthcoming.

On November 6, 2024, this hearing was initially scheduled for December 12, 2024, at 9:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant at the same address as used previously. As before, both the certified and first-class letters were returned. On December 10, 2024, I emailed Respondents’ counsel that the notations on the returned correspondence led me to research and confirm that Claimant resided at an apartment complex, and that her unit number was 172. For that reason, I canceled the hearing and issued a new 20-day letter with the enhanced address. But once again, the United States Postal Service returned both the certified and first-class letters, explaining that they were “NOT DELIVERABLE AS ADDRESSED.” (Emphasis in original) Again—unsurprisingly—Claimant did not file the requested response to Respondents’ motion.

On December 30, 2024, the hearing on the Motion to Dismiss was rescheduled for January 30, 2025, at 9:30 a.m. at the Commission in Little Rock. But in this instance, while the Notice of Hearing was again sent to Apartment 172 and the address listed on Claimant’s Form AR-C, the one sent by first-class mail managed to be delivered to her. She brought it to the hearing, crumpled, and

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testified that it along with a number of other mail items had been delivered to her belatedly en masse.

The hearing took place as scheduled. Both parties appeared, and Claimant testified. Respondents argued for dismissal under both § 11-9-702(a)(4) & (d) (Repl. 2012) and Rule 13.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of 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 notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. Respondents have not proven by a preponderance of the evidence that this claim should be dismissed under Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).

5. Respondents have not proven by a preponderance of the evidence that this claim should be dismissed under Ark. Code Ann. § 11-9-702(d) (Repl. 2012).
6. The Motion to Dismiss is hereby denied.
7. Claimant has requested a hearing on the issue of her entitlement to initial benefits.
8. This claim will proceed to a hearing on the merits.

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). In turn, Ark. Code Ann. § 11-9-702(a)(4) & (d) (Repl. 2012) read:

(4) If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may**, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

...

(d) 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.

(Emphasis added) 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.*

Claimant testified that the reason that she had not requested a hearing on her claim after its filing was that she was unaware that she had to do so. The silence she encountered after its filing, she surmised, was due to the Commission being busy; she was simply waiting to hear back. As for the incomplete address on her Form AR-C, she was unable to explain why she had

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done this. Claimant requested a hearing on her claim, in the event that it is not dismissed.

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the motion to dismiss hearing under Rule 13, she has not yet abridged that rule. By the same token, I find that while § 11-9-702(a)(4) & (d) provide that a claim “may” (clearly intending that the administrative law judge has discretion in the matter) be dismissed for failure to request a hearing within six months of the filing of the claim, dismissal is not yet warranted here. The Motion to Dismiss is thus denied.

Prehearing questionnaires will be immediately issued to the parties; and this matter will proceed to a full hearing on the merits.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents’ Motion to Dismiss is hereby respectfully denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge