

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H500803**

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| VERLENCIA GATEWOOD, EMPLOYEE | CLAIMANT |
| TRINITY RAIL MAINTENANCE SVCS., EMPLOYER | RESPONDENT |
| ACE AMERICAN INS. CO., CARRIER | RESPONDENT |

OPINION FILED OCTOBER 20, 2025

Hearing before Administrative Law Judge O. Milton Fine II on October 17, 2025, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*.

Respondents represented by Mr. Jason M. Ryburn, Ryburn Law Firm, Attorneys at Law, 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 October 17, 2025, in Jonesboro, Arkansas. Claimant appeared at the hearing and gave testimony. Admitted into evidence was 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”), forms, pleadings, and correspondence related to this claim, consisting of eight pages.

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The record shows the following procedural history:

Per the Form AR-C that Claimant filed on February 6, 2025, Claimant purportedly suffered an injury that she described as follows:

Developed a fungal infection on my feet that went up to the knees of the front of my legs. This infection came from the build-up of rainwater in the shop and mixed with rodent feces and tobacco spit from employees.

She checked the boxes of the form to indicate that she was seeking medical treatment, temporary total disability benefits, rehabilitation, and an attorney's fee (curious in light of the fact that she was *pro se*). According to the Form AR-2 that was filed on February 21, 2025, Respondents controverted the claim in its entirety.

The record reflects that nothing further took place on the claim until August 11, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim because Claimant "has taken no action in the past 6 months to further this claim." The file was assigned to me on August 12, 2025; and on August 13, 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 Jonesboro 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 September 9, 2025; but the first-class letter was not returned. On September 4, 2025, a hearing on the Motion to Dismiss was scheduled for October 17, 2025, at 12:00 p.m. at the Craighead County Courthouse in Jonesboro. The certified mailing of the

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Notice of Hearing to Claimant was claimed by someone with an illegible signature; and the first-class mailing was not returned.

The hearing took place as scheduled. Both parties appeared, and Claimant testified. Respondents argued for dismissal under AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702(a)(4) (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):

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. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute her claim under 11 C.A.R. § 25-110(d).
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).

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5. The Motion to Dismiss is hereby denied.
6. Claimant has requested a hearing on the issue of her entitlement to initial benefits.
7. This claim will proceed to a hearing on the merits.

III. DISCUSSION

11 C.A.R. § 25-110(d) 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(a)(4) (Repl. 2012) reads:

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.

(Emphasis added)

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 having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326

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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. She had multiple contacts with the Commission's Legal Advisor Division; but she had not gotten satisfactory answers to her questions. 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 § 25-110(d), she has not yet abridged that rule. By the same token, I find that while § 11-9-702(a)(4) provides that a claim "may" (clearly intending that the administrative law judge has discretion in the matter) be dismissed for failure to

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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.

IV. 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