

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H001216**

JAMES HAYNIE, EMPLOYEE

CLAIMANT

LINEN KING, LLC, EMPLOYER

RESPONDENT

TRAVELERS INDEMNITY COMPANY, CARRIER

RESPONDENT

OPINION FILED FEBRUARY 24, 2023

Hearing before Administrative Law Judge Steven Porch on February 23, 2023 in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*.

The Respondents were represented by Mr. Guy Alton Wade, 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 February 23, 2023 in Little Rock, Arkansas. Claimant, who is *pro se*, appeared in person and testified. Respondents were represented at the hearing by Mr. Guy Alton Wade, Attorney at Law, of Little Rock, Arkansas. In addition to Claimant's testimony, the record consists of the Commission's file—which has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on February 26, 2020, Claimant purportedly injured his right shoulder at work on February 14, 2020 when tearing open bags. According to Form AR-2 that was filed on March 3, 2020, Respondents accepted this injury as compensable and paid medical and indemnity benefits pursuant thereto. At some point, soon after, Claimant hired legal counsel, Laura Beth York, who filed Form AR-C, asking for a full range of benefits on February 16, 2022.

However, on July 29, 2022, Ms. York filed a Motion to Withdraw from this case. The Full Commission granted Ms. York's Motion to Withdraw as Counsel on August 9, 2022. Since then, the case has been inactive until Respondents filed a Motion to Dismiss due to the lack of prosecution. A hearing was set February 23, 2023, in Little Rock, Arkansas on the Motion to Dismiss. The hearing took place as scheduled.

At the hearing, the Claimant appeared and testified. 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 notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents did not 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, denied.
5. Claimant has requested a hearing on his claim.
6. This matter 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).

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.*

At the hearing, Claimant objected to a dismissal and testified that it is his desire to proceed to another hearing on his claim. He is seeking additional benefits in the form of medical mileage and prescription medication.

After consideration of 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 not yet abridged this rule. 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 denied.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge