

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H206300**

BRIDGETTE MITCHELL, EMPLOYEE

CLAIMANT

**FEDEX GROUND PACKAGE SYSTEM, INC.,
EMPLOYER/SELF INSURED**

RESPONDENT

**SEDGWICK CLAIMS MANAGEMENT,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED AUGUST 15, 2023

Hearing before Administrative Law Judge Steven Porch on August 15, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is representing herself, Pro Se, Little Rock, Arkansas.

The Respondents were represented by Zachary F. Ryburn, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter was scheduled for a Motion to Dismiss today, August 15, 2023. Claimant did not appear for the the hearing. Notices were sent to Claimant certified return receipt requested and regular first class mail. The Claimant did not sign for the certified letter. However, the first class letter containing the same hearing notice was not returned.

I opened the hearing at 10:10am, 10 minutes after the motion hearing was scheduled to begin. All parties were given written notice of this hearing. I have entered into evidence the Commission's file by reference.

The evidence reflects that Claimant's injury occurred on August 24, 2022, where she purportedly injured her tail bone, pelvis, lower back, right side, and other whole body. This incident allegedly occurred when Claimant was attempting to put a package on a

truck for delivery when she fell through a gap situated between the dock and the delivery truck. This is a totally controverted claim.

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 full-hearing that was later converted to a Motion to Dismiss hearing under AWCC R. 099.13, due to Claimant's failure to appear at the full-hearing.
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, at the addresses provided by each party, for the Motion to Dismiss hearing under Rule 13. I further find that Claimant has abridged this rule. Thus I find Respondent's Motion to Dismiss should be granted without prejudice.

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.

STEVEN PORCH
Administrative Law Judge