BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H505728

DEBRA J. MOORE, EMPLOYEE **CLAIMANT**

NESTLE US HOLDCO, INC.,
EMPLOYER **RESPONDENT**

INDEMN. INS. CO. OF NO. AMER.,
CARRIER **RESPONDENT**

OPINION FILED AUGUST 24, 2026

Hearing before Administrative Law Judge O. Milton Fine II on August 21, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Michael C. Stiles, Attorney 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 August 21, 2026, in Jonesboro, Arkansas. Claimant appeared at the hearing and gave testimony. Admitted into evidence were Commission Exhibit 1 (s*ee* 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 Respondents' Exhibit 1, pleadings, correspondence and forms related to this claim.

The record reflects the following procedural history:

Per the First Report of Injury or Illness filed on September 14, 2025, Claimant purportedly suffered an injury to her left shoulder at work on June 6, 2025. According to the Form AR-2 that was filed on September 15, 2025, Respondents controverted the claim.

On September 8, 2025, Claimant filed a Form AR-C. No boxes on the form were checked to indicate what type of benefits Claimant was seeking. Respondents' counsel entered his appearance on September 18, 2025.

Nothing further took place on the claim until June 23, 2026. On that date, Respondents filed the instant motion and brief in support thereof, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) and 11 C.A.R. § 25-110(d) due to Claimant's failure to request a hearing in this matter, or to otherwise move the case forward. The file was assigned to me on June 24, 2026; and on June 25, 2026, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by certified and first-class mail to the Wynne, Arkansas address of Claimant listed in the file and on her Form AR-C. The certified letter was claimed by her on July 13, 2026; and the first-class mailing was not returned. However, no response from Claimant to the motion was forthcoming. On July 17, 2026, a hearing on the Motion to Dismiss was scheduled for August 21, 2026, at 11:00 a.m. at the Craighead County Courthouse in Jonesboro. The Notice of Hearing was sent to Claimant via first-class and certified mail to the same address in Wynne as before. In this instance, she

signed for the certified letter on July 23, 2026; and the notice sent by first-class mail 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), contending, inter alia, that Claimant has done nothing to prosecute her claim since the filing of her Form AR-C.

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(d) (Repl. 2012).
5. The Motion to Dismiss is hereby denied.

6. Claimant has requested a hearing on the issue of her entitlement to benefits under this claim.

7. This claim will proceed to a hearing on the merits.

8. Claimant is hereby directed to respond to all outstanding discovery.

III. DISCUSSION

11 C.A.R. § 25-110(d) (formerly AWCC R. 099.13) 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).

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 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 testified that she received a copy of the 20-day letter, but did not respond as directed because she planned to appear in person at the hearing. She objected to a dismissal of her claim and stated that she wishes a hearing thereon, 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 hearing under § 25-110(d), she has not yet abridged that rule. By the same token, I find that while § 11-9-702(d) provides 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 all parties; and this claim will proceed to a full hearing on the merits. Claimant is hereby directed to respond to all outstanding discovery.

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the Motion to Dismiss is, respectfully, denied.

IT IS SO ORDERED.

_____
O. MILTON FINE II
Chief Administrative Law Judge