

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H300515**

LILLIE K. NEAL, EMPLOYEE	CLAIMANT
EDWARDS FOOD GIANT, EMPLOYER	RESPONDENT
RETAILERS CASUALTY INSURANCE, INSURANCE COMPANY	RESPONDENT
SUMMIT CONSULTING, LLC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 9, 2023

Hearing before Administrative Law Judge Steven Porch on August 9, 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 full-hearing today, August 9, 2023, 10am. Claimant did not appear for 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 further requested my assistant, Melanie Miller, to call the Claimant on the date of the hearing to ascertain her whereabouts. My assistant was not able to reach the Claimant. My assistant further checked with security downstairs to see whether she signed in to enter the building. The Claimant was not in the building.

I opened the hearing at 10:35am, 35 minutes after the time the full-hearing was scheduled to begin. I asked Respondent's counsel how would he like to proceed and he

made an oral Rule 13 motion for dismissal for lack of prosecution. I have accepted this motion and entered into evidence the Commission's file by reference. I also entered the Prehearing Order filed on June 26, 2023, as Commission's Exhibit 1.

The evidence reflects that Claimant's injury occurred on October 21, 2022, where she purportedly injured her head. This incident allegedly occurred when Claimant was attempting to sit down in her employer's breakroom when she fell backwards out of the chair injuring her head. Claimant was not clocked in at the time of the incident but was waiting for her shift to start. 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 her 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