

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE N<sup>o</sup> H000250**

**DARRYL G. PAYNE, EMPLOYEE**

**CLAIMANT**

**PHILLIPS COMMUNITY COLLEGE,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
THIRD PARTY ADMINISTRATOR**

**RESPONDENT**

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**OPINION FILED 17 SEPTEMBER 2025**

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Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 19 June 2025 in Helena/West Helena, Arkansas.

The claimant appeared *pro se*.

Mr. Robert Montgomery appeared for the respondents.

**I. STATEMENT OF THE CASE**

This case is related to a stipulated compensable left leg injury that the claimant sustained by specific incident on 7 January 2020. Hearings were previously held on 30 March 2022 and 17 August 2023. Corresponding Opinions were issued on 22 June 2022 and 14 November 2023. The claimant appealed the 14 November 2024 Opinion. On 28 May 2024, the Full Commission filed its Opinion on the appeal, affirming in part and reversing in part the ALJ's Opinion. In that Opinion, and relevant to the immediate matter before the Commission, the Full Commission found that the claimant was entitled to additional reasonable and necessary medical treatment for his compensable left leg injury.

The present matter was heard on 19 June 2025 in Helena/West Helena, Arkansas. The parties participated in a prehearing telephone conference on 12 November 2024. A subsequent Prehearing Order was admitted to the record without objection as Commission's Exhibit N<sup>o</sup> 1. Consistent with that Order, the parties agreed to the following:

STIPULATIONS

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier relationship existed on 7 January 2020.
3. This claim was previously litigated, with the relevant findings of the 14 November 2024 ALJ Opinion and 28 May 2024 Full Commission Opinion controlling.
4. The claimant previously sought additional treatment from Dr. [Stacy] Busby, which the Full Commission awarded. Dr. Busby has since, however, declined to continue a physician-patient relationship with the claimant.
5. After providing the claimant with an MRI scan, the respondents arranged for the claimant to be seen by Dr. [Jason] Stewart, an orthopedic surgeon. The claimant has refused to participate in care with Dr. Stewart.

ISSUES

1. Whether the claimant is entitled to additional medical benefits.
2. Whether the claim should be dismissed for the claimant's failure to prosecute his claim under AWCC Rule 13 (now codified at 11 C.A.R. § 25-110(d)).

CONTENTIONS

The parties' contentions, as listed in their prehearing information filings, were incorporated by reference into the Prehearing Order.

The claimant contends that his "need for surgery [has] already been litigated" and "Because after falling down a flight of stairs carrying computers, my leg is still not right. I feel I was not compensated after those surgery and other ailments developed." (sic)

The respondents contend:

Claimant has requested a hearing in his claim to address additional medical treatment. On May 28, 2024, the Full Commission issued an Opinion which contained, among other findings, a finding that the claimant proved his entitlement "to additional medical treatment to be provided by Dr. Busby". (Full Comm. Opinion dated May 28, 2024, p.22). The respondents did not appeal the Full Commission decision and set about arranging an appointment for the claimant to be seen by Dr. Busby for "additional medical treatment."

The Respondents were advised by Dr. Busby's office that due to prior interactions with the claimant Dr. Busby would not see the Claimant again as a patient. The respondents were also informed by Dr. Busby's office that they would not schedule an appointment for the claimant to be seen there. (See attached letter dated June 27, 2024). Upon learning of Dr. Busby's refusal to see the claimant as a patient the Respondents arranged for claimant undergo an MRI which was done on July 23, 2024.

After the MRI was completed, the respondents then set about arranging an appointment with an orthopedic surgeon for evaluation of the MRI results, etc. An IME appointment was arranged for the Claimant to be seen by Dr. Stewart on August 26, 2024. The claimant was advised of the IME appointment, but he refused to attend the appointment with Dr. Stewart. The claimant refused to attend the IME appointment and indicated he wanted a "regular doctor appointment." The Respondents paid for the IME appointment and were not given a full refund by Dr. Stewart's office. The Claimant then requested a hearing in this claim.

The Respondents contend that they have and are trying to provide the reasonably necessary medical treatment authorized by the Full Commission in their May 28, 2024 Opinion. The Claimant has been less than cooperative and has thwarted attempts to arrange medical appointments. The Respondents reserve the right to amend these contentions pending the completion of discovery.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The Commission has jurisdiction over this claim.
2. The Law of the Case Doctrine applies to earlier Opinions issued on this claim.
3. 11 C.A.R. § 25-110(d), formerly Commission Rule 099.13, provides for a dismissal of a claim for want of prosecution upon meritorious application to the Commission from either party and reasonable notice.
4. Reasonable notice of the hearing was provided to both parties.
5. The respondents have not proven by a preponderance of the evidence that the claimant has failed to prosecute this claim.
6. Consistent with the Full Commission's 28 May 2024 Opinion, the claimant remains entitled to additional treatment for his stipulated compensable left leg injury.

### III. ADJUDICATION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). 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.*

#### SUMMARY OF THE EVIDENCE

The claimant testified on his own behalf and was the only witness. The record consists of the hearing transcript and the following exhibits: Commission's Exhibit No 1 (the 19 November 2024 Prehearing Order); Claimant's Exhibit No 1 (15 pages of miscellaneous screenshots and pictures of documents); and Respondent's Exhibit No 1 (one index page and twelve pages of records).

#### *Claimant's Testimony*

The claimant's testimony began with the following exchange:

Judge: ... the gist of things is that the respondents have tried to send you to a doctor, an orthopedic surgeon, Dr. Stewart, for an IME [Independent Medical Evaluation], and you've said that you don't want to be seen by Dr. Stewart and you want to go to another doctor. Is that fair?

Claimant: Fair.

[TR at 11-12.] The claimant's refusal to participate in the IME was based on his belief that any medical opinions provided as a result of that examination would be unfair to him.

Judge: ... you were not going to go see Dr. Stewart for the IME and you voiced the concerns you mentioned a moment ago, saying that if they—if they organized and that they were paying for it, that you didn't think you would get fair review by the physician or fair results, and that, well, basically the odds were going to be against you to be able to get more help from them, and so that was kind of the basis for your not wanting to go...

Claimant: Yes, sir, absolutely.

[TR at 15-16.]

In its 28 May 2024 Opinion, the Full Commission found that the claimant was entitled to additional reasonable and necessary medical treatment from orthopedic surgeon Dr. Stacy Busby for his stipulated compensable left leg injury. In the litigation preceding that Opinion, there were competing medical opinions as to whether the claimant would benefit from additional diagnostic or treatment options. Dr. Busby's evaluation suggested that the claimant could or would benefit from additional treatment. The respondents explained that after the Full Commission's Opinion granted additional medical treatment from Dr. Busby, Respondent Public Employee Claims Division (PECD) authorized an MRI for the claimant's left leg and attempted to coordinate further treatment with Dr. Busby. A copy of a letter from PECD authorizing that treatment was provided by the respondents.

[Resp. Ex. No 1 at 2.] But, "Dr. Busby said under no circumstances would she see him again, so that eliminated Dr. Busby as a possibility...." [TR at 18.] Dr. Busby's refusal to see the claimant and PECD's subsequent attempts to coordinate treatment for the claimant were noted in the respondents' internal claims management system. PECD notified the claimant of the same via a letter dated 27 June 2024. [Resp. Ex. No 1 at 11-12.]

After Dr. Busby terminated her provider-patient relationship with the claimant, PECD coordinated an IME with Dr. Jason Stewart, another orthopedic surgeon. They

provided payment for Dr. Stewart's evaluation in advance of the claimant's 26 August 2024 appointment. The claimant, though, refused to attend the appointment with Dr. Stewart.

The bulk of the testimony was around the respondents' attempt to provide what they considered to be reasonable and necessary treatment (by way of the IME with Dr. Stewart), in conformance with the Full Commission's Opinion, and the claimant's refusal to attend the IME that had been scheduled for him with Dr. Stewart.

Judge: ... the Commission said you were entitled to an appointment with Dr. Busby. They tried to arrange that, and Dr. Busby refused to see you anymore. Whatever reason she stopped, I don't know. But they went ahead, sent you to an MRI, you showed up for that and got your results. They arranged for Dr. Stewart to try to see you. They paid for that, and then you refused to cooperate with that. Is that accurate?

Claimant: Yeah.

[TR at 29.]

The claimant argues that he would be willing to see any doctor to continue obtaining treatment for his compensable left leg injury. At the hearing he read a message he had written regarding his claim, stating, "I've been fighting for my disability since the first of the year. I lost my brother three years back, and then I lost my uncle. I'm willing to go to anywhere workman's comp wants me to go at this point where this chronic pain has took over my body." [TR at 13.]

The respondents' position, on the other hand, was also made clear at the hearing:

The fact of the matter is Dr. Stewart was agreeable to seeing him. He elected not to go and told everybody he wasn't going to go. It didn't matter what doctor they picked. He wasn't going. They paid \$3,000 for him not to go to an appointment, and he basically for 13 months now has just attempted to direct his own medical care in his workers' comp claim. I would submit that's contrary to what the law states, and to allow a Claimant to just pick and choose where he wants to go or he or she might want to go, partially based on what I believe is faulty reasoning about the whole process, to me makes no sense and shouldn't be upheld. That shouldn't be honored in my opinion.

[TR at 27-28.]

THE RESPONDENTS HAVE NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT THIS CLAIM SHOULD BE DISMISSED FOR A FAILURE TO PROSECUTE.

The respondents have the burden to prove by a preponderance of the evidence that the claimant has failed to prosecute his claim. Ark. Code Ann. § 11-9-705(a)(3). Under 11 C.A.R. § 25-110(d) (formerly cited as Rule 13),

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.

In *Johnson v. Triple T Foods*, 55 Ark. App. 83, 929 S.W.2d 730, 1996 Ark. App.

LEXIS 628, our Court of Appeals stated,

The Commission has the authority, under ACA § 11-9-205(a)(1)(A) (Repl. 1996), to make such rules and regulations as may be found necessary. Under this authority, the Commission has promulgated its Rule 13, which provides that if a party requests that a claim be dismissed for want of prosecution, the Commission may dismiss the claim.

The claimant acknowledged that he refused to submit to the IME arranged for him with Dr. Stewart by the respondents. He explained that his refusal was, at least in part, based on a belief that Dr. Stewart would not be fair to him. He claims willingness, however, to attend any “regular” doctor appointment they will arrange for him. The respondents argue that the claimant’s refusal to attend the pre-paid IME amounts to his failing to prosecute his claim. I disagree.

The Full Commission previously found that the claimant was entitled to additional treatment with Dr. Busby for his compensable left leg injury. Consistent with that finding, the respondents authorized an MRI scan of the claimant’s left leg. The respondents then attempted to provide access to treatment with Dr. Busby. She, however, refused to continue seeing the claimant as a patient. This created some difficulty for the respondents.

In keeping with their understanding of their obligations to provide reasonable and necessary treatment to the claimant, the respondents went about finding a substitute provider for the claimant. But their efforts went beyond simply coordinating continuity of care. Instead, the respondents scheduled an IME for the claimant. Workers' Compensation laws provide for such evaluations, and a claimant's cooperation with an IME may be compelled by the Commission under the controlling statute, Ark. Code Ann. § 11-9-511:

- (a) An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the Commission may require from time to time if reasonable and necessary.
- (b) The places of examination and treatment shall be reasonably convenient for the employee.
- (c) Such physician as the employee, employer, or insurance carrier may select and pay for may participate in the examination if the employee, employer, or insurance carrier so requests.
- (d) In cases where the commission directs examination and treatment, proceedings shall be suspended, and no compensation shall be payable for any period during which the employee refuses to submit to examination and treatment or otherwise obstructs the examination or treatment.
- (e) Failure of the employee to obey the order of the commission in respect to examination or treatment for a period of one (1) year from the date of suspension of compensation shall bar the right of the claimant to further compensation in respect to the injury.

*See generally Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997)(Arey, J., concurring). But missing from the facts before me, as contemplated in the operant statutory language on IMEs, is the Commission's direction or order for the claimant to submit to an IME. Penalties for noncompliance by a claimant with a Commission-directed evaluation are available under the statute.

There is no evidence in the record, however, that the Commission ordered the claimant's participation in an IME. In attempting to act in conformance with their obligation to provide for the claimant's treatment, the respondents instead went beyond the

scope of that obligation, implicating other statutory criteria not related to the Full Commission's Opinion and direction. And the claimant was not agreeable to submitting to any care at the direction of the respondents besides what he considered to be a "regular" doctor's appointment.

The respondents now seek a dismissal for the claimant's refusal to submit to an IME that was organized in the absence of an order by the Commission compelling his participation in the same. On the one hand, the claimant has plainly refused to voluntarily submit to an IME. On the other hand, he has plainly expressed his willingness to participate in any other *treatment* that the respondents might arrange for him. On the evidence before me, I cannot find that the respondents have proven by a preponderance of the evidence that the claimant has failed to prosecute his case. He has, indeed, not cooperated with their arrangements for an evaluation. But his refusal to do so in the absence of a specific order or directive from the Commission does not constitute a failure to prosecute his claim.

THE CLAIMANT IS ENTITLED TO ADDITIONAL MEDICAL TREATMENT

The parties agree that the Full Commission found in its 28 May 2024 Opinion that the claimant was entitled to additional medical treatment for his compensable left leg injury. That finding was specific to a particular course of treatment being considered by Dr. Busby. While I recognize the difficulty created for the respondents with Dr. Busby terminating the physician-patient relationship, they did not present evidence that they have, by virtue of that difficulty, been relieved of their obligation to provide for additional treatment. Nor did they present medical evidence in furtherance of an argument that his clinical presentation has changed since the Full Commission's Opinion found his entitlement to additional treatment. The claimant therefore remains entitled to additional treatment as considered in the Full Commission's Opinion.

**IV. CONCLUSION**

For the reasons explained above, the respondents have failed to prove by a preponderance of the evidence that this claim should be dismissed for a failure by the claimant to prosecute his claim. Additionally, the claimant remains entitled to additional treatment for his compensable left leg injury.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE