

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H306935**

JAMES T. PAYNE, EMPLOYEE	CLAIMANT
NUCOR STEEL OF ARK., EMPLOYER	RESPONDENT
ARCH INDEMN. INS. CO., CARRIER	RESPONDENT

OPINION FILED MAY 5, 2026

Hearing before Administrative Law Judge O. Milton Fine II on May 1, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Zachary F. Ryburn, Ryburn Law Firm, Attorneys 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 May 1, 2026, in Jonesboro, Arkansas. The testimony of Claimant was taken in the case. Also, in order to address adequately this matter under 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 without objection, I have blue-backed to the record documents—forms, pleadings, and correspondence—from the Commission’s file on the claim, consisting of 45 pages. In accordance with *Sapp v. Tyson Foods, Inc.*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, these documents have been served on the parties in conjunction with this opinion.

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The record shows the following procedural history:

On October 26, 2023, through then-counsel Scott Hunter, Jr., Claimant filed a Form AR-C. Therein, Claimant requested the full range of initial indemnity benefits and alleged that he suffered a compensable injury to his left elbow on August 14, 2023. No hearing request accompanied this filing.

On November 9, 2023, Hunter requested a change of physician on behalf of his client. In an order entered by the Medical Cost Containment Division of the Commission on December 21, 2023, Claimant's authorized treating physician was changed from Dr. Christian Fahey to Dr. Apurva Dalal; and an appointment with Dalal was set for January 16, 2024, at 1:00 p.m. In an amended order dated February 29, 2024, the appointment date was changed to February 12, 2024.

Hunter's office emailed the Commission on November 7, 2024, requesting a hearing on the claim. The file was assigned to me on November 8, 2024; and prehearing questionnaires were issued to the parties that same day. On November 11, 2024, Respondents' co-counsel entered his appearance. The parties filed timely prehearing responses on December 9 and 10, 2024, respectively. A prehearing conference on the claim took place on January 6, 2025. Following that conference, I issued a prehearing order, scheduling a hearing for March 21, 2025, on the following issue: "Whether Claimant is entitled to additional treatment of his stipulated compensable left upper extremity injury in the form of surgery and related treatment." However, Hunter requested a hearing

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on March 13, 2025, representing to the Commission that Claimant had suffered a heart attack and had to have four stents implanted. To allow Claimant time to recover, I cancelled the hearing and returned the file to the Commission's general files.

On April 29, 2025, Hunter's office emailed another hearing request to the Commission. The hearing was rescheduled for August 1, 2025. However, on July 23, 2025, Hunter's office emailed my office, stating:

We have spoken to our client and he has decided that there is no reason for a hearing at this time. We would like to request the file be returned to general files and should it be necessary, we will request a hearing in the future.

Based on this, along with an indication by Respondents that they were not objecting, the hearing was again cancelled, and the file was again returned to the Commission's general files.

The record reflects that no further action took place on the claim until January 6, 2026, when Respondents filed the instant motion to dismiss. Hunter filed a motion to withdraw from his representation of Claimant on January 13, 2026. In an order entered on February 9, 2026, I granted Hunter's motion under AWCC Advisory 2003-2. On March 2, 2026, my office wrote Claimant, asking for a response to the motion to dismiss within 20 days. Claimant did so on March 26, 2026, stating in pertinent part:

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I do not wish for this motion to dismiss be granted. I do not feel like my injury was properly taken care of from day one. I am currently waiting for an investigation for medical malpractice to conclude by the Arkansas Board of Nursing against Nucor's nurse Krissy Cunningham. I have a lot of evidence to support my claim for medical malpractice including emails and even voice recordings.

...

I am also having a difficult time finding a new attorney to take this case against Nucor.

On March 25, 2026, a hearing on the Motion to Dismiss was scheduled for May 1, 2026, at 1:00 p.m. at the Commission in Little Rock. The hearing on the Motion to Dismiss proceeded as scheduled. Both parties appeared at the hearing pursuant to the Notice of Hearing, and Claimant gave testimony. Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)).

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 claim.
2. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to 11 C.A.R. § 25-110(d).

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3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute this claim under 11 C.A.R. § 25-110(d).
4. The Motion to Dismiss is hereby denied.
5. Claimant has requested a hearing on the issue of his entitlement to additional benefits.
6. This claim will proceed to a hearing on the merits.

III. DISCUSSION

11 C.A.R. § 25-110(d) 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).

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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.*

Claimant testified that the reason that he had not renewed his request for a hearing was that (1) he was unsuccessfully seeking new counsel; (2) he had been preoccupied by the above-referenced proceeding before the Arkansas Nursing Board. Claimant explained that he no longer wished to have the surgery that was to have been the subject of the original hearing, because it is his understanding that too much time has elapsed for it to be successful. Instead, he requested a hearing on his claim, in the event that it is not dismissed, on his entitlement to additional indemnity benefits.

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the motion to dismiss hearing under 11 C.A.R. § 25-110(d), he has not yet abridged that rule. The Motion to Dismiss is thus denied.

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Prehearing questionnaires will be immediately issued to the parties; and this claim 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 respectfully denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge