

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H204175**

**OPAL M. RUSSELL,  
EMPLOYEE**

**CLAIMANT**

**ST. BERNARDS HOSPITAL, INC.,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**RISK MANAGEMENT RESOURCES,  
TPA**

**RESPONDENT**

**OPINION FILED OCTOBER 30, 2024**

Hearing conducted on Friday, October 11, 2024, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Jonesboro, Craighead County, Arkansas.

The Claimant, Ms. Opal Russell, *Pro Se*, of Jonesboro, Arkansas, did not appear in person at the hearing.

The Respondents were represented by the Honorable S. Shane Baker, Jonesboro, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a Motion to Dismiss filed by Respondents. A hearing on the motion was conducted on September 8, 2023, in Jonesboro, Arkansas. Claimant, according to Commission file is *Pro Se*, failed to appear at the hearing.

The Claimant worked for the Respondent/Employer as a certified nursing assistant. The date for Claimant's alleged injury was on February 8, 2022. She reported her injury to Respondent/Employer on February 9, 2022. Respondents admitted no exhibits into evidence. Nevertheless, admitted into evidence was blue-backed Form AR-C, Form AR-1, Form AR-2, a copy of certified return receipt returned to the Commission on August 29, 2024, a copy of certified return receipt returned to the Commission on August 12, 2024, the September 8, 2023 Motion to

Dismiss hearing transcript, Motion to Dismiss Opinion dated September 11, 2023, and copy of hearing notice, *as discussed infra*.

The record reflects on June 8, 2022, a Form AR-C was filed with the Commission, by then-attorney Jim Burton, purporting that Claimant injured her right knee and is seeking benefits. On June 9, 2022, a Form AR-1 was filed with the Commission purporting that Claimant injured herself when she and two co-workers were attempting to lift a resident from the floor when her right knee twisted causing pain. Also on June 9, 2022, a Form AR-2 was filed by Respondents accepting compensability of the injury. On June 30, 2023, Respondents filed a Motion to Dismiss claiming a lack of prosecution by the Claimant. A hearing was held on September 8, 2023.

The Claimant, on the date of the hearing, was represented by Attorney Jim Burton and the Respondents were represented by Attorney Justin Parkey, who filled in for Attorney Shane Baker. Claimant's attorney stated, on record, that he has not heard from his client regarding this notice and hasn't heard anything about the status of her treatment. But assured the Commission that he will make a diligent effort to locate the Claimant. Claimant's counsel also admitted that he was intending to file a Motion to Withdraw in this matter. I filed an Opinion in this matter on September 11, 2023, granting Respondent's Motion to Dismiss. On March 20, 2024, Claimant's counsel filed a Motion to Withdraw as Counsel. I granted Claimant's counsel Motion on March 25, 2024. But instead of foreclosing Claimant's opportunity to argue her claim, I granted her, in that Opinion, thirty-five days to enter her preliminary notice and questionnaires. Otherwise, I would entertain another Motion to Dismiss from Respondents. The Claimant has failed to submit the required documents.

The Respondents next filed a Motion to Dismiss on July 15, 2024, requesting this claim be dismissed for a lack of prosecution. The Claimant was sent, certified and regular U.S. Mail, notice

of the Motion to Dismiss from my office on July 22, 2024, to her last known address. The certified motion notice was unclaimed by Claimant and returned to the Commission on August 12, 2024. Also, the motion notice was sent regular U.S. Mail and was not returned to the Commission. Claimant did not respond to the notice in writing as required. Thus, in accordance with applicable Arkansas law, the Claimant was mailed due and proper legal notice of Respondents' Motion to Dismiss hearing date at her current address of record via the United States Postal Service (USPS), First Class Certified Mail, Return Receipt Requested, and regular First-Class Mail, on August 23, 2024. The certified notice was claimed August 29, 2024, but the regular First-Class mail hearing notice was returned on August 29, 2024. The hearing took place on September 13, 2024. As mentioned before, the Claimant did not show up to the hearing.

The evidence reflects that Claimant's injury occurred on February 8, 2022, where she purportedly injured her right knee picking up a resident off the floor after having several falls back-to-back. This incident allegedly occurred during the course and scope of her employment. Claimant has not contacted her attorney with any updates or statuses concerning her claim. Claimant's attorney expressed his desire to file a motion for withdrawal for the lack of communication. Since filing the Form C on June 8, 2022, this case has been inactive until Respondents filed a Motion to Dismiss due to the lack of prosecution. A hearing was held on September 8, 2023, in Jonesboro, Arkansas on the Motion to Dismiss. As previously stated, the Claimant did not appear for the hearing.

## **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 Commission has jurisdiction over this claim.
2. The Claimant and Respondents both had reasonable notice of the October 11, 2024, hearing.
3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC Rule 099.13.
4. The Respondents' Motion to Dismiss should be granted.
5. This claim is hereby dismissed 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 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.

**CONCLUSION**

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted, and Claimant's claim is dismissed *without prejudice*.

**IT IS SO ORDERED.**

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STEVEN PORCH  
Administrative Law Judge