

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC CLAIM NO. H010344**

**MAGDELYNN SUTTON,
EMPLOYEE**

CLAIMANT

**AMAZON.COM SVCS, LLC.,
EMPLOYER/SELF INSURED**

RESPONDENT

**AMERICAN ZURICH INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED JULY 31, 2024

Hearing before Administrative Law Judge Steven Porch on June 20, 2024, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

The Respondents were represented by Mr. Wade H. Scofield II, Attorney at Law, Brentwood, Tennessee.

I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by the Respondent on February 6, 2024. The Claimant worked as an associate for Respondent/Employer. Admitted into evidence is Respondents' Exhibit 1, Respondents' Motion to Dismiss, consisting of 21 pages, and Respondents' Exhibit 2, Claimant's Questionnaire, consisting of 2 pages. I have also blue-backed Forms AR-1, AR-2, and AR-C, *as discussed infra*.

The record reflects on December 14, 2020, a Form AR-C was filed by then-attorney, Laura Beth York, alleging injuries to her left and right hand, right leg, left and right knees, back, neck and other whole body due to tripping over a box. Claimant's injury occurred November 26, 2020. Respondents filed a Form AR-2, on December 21, 2020, accepting the claim as compensable. Claimant's counsel on September 25, 2023, withdrew as counsel of record. Respondents sent

correspondence to Claimant on November 14, 2023, to settle the claim. The Claimant did not respond to the letter, or any phone calls made by Respondents' counsel.

The Respondents next filed a Motion to Dismiss on February 6, 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 February 7, 2024, to her last known address of record. The certified notice was claimed by Claimant on February 13, 2024. Likewise, the notice sent regular U.S. Mail 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 May 20, 2024. The certified notice was claimed by the Claimant on May 23, 2024. The hearing took place on June 20, 2024, and the Claimant did show up to the hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including Respondents' Exhibit 1, correspondence and pleadings, consisting of 21 pages, Respondents' Exhibit 2, Questionnaire, consisting of 2 pages, and the argument of both Claimant's counsel and Respondents' counsel, 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 notice of the June 20, 2024, Motion to Dismiss hearing date.
3. Respondents did not 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, denied.

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.*

Consistent with AWCC Rule 099.13, as well as our court of appeals’ ruling in *Dillard vs. Benton County Sheriff’s Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on the Respondents’ Motion to Dismiss. I do find by the preponderance of the evidence, introduced at the hearing and contained in the record, that Claimant has neither made a bona fide request for a hearing nor has she taken any action to pursue

her claim prior to the hearing date. Nevertheless, I further find that Claimant has shown, by her testimony that she wants her claim to continue forward and by securing legal counsel and having that counsel present at the Motion to Dismiss hearing, a sincere desire to prosecute her claim. Thus, I find that the Respondents have not proven by the preponderance of the evidence that its' motion should be granted.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge