

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H108896**

**RANDY TURNER, EMPLOYEE**

**CLAIMANT**

**HYTROL CONVEYOR CO., INC.,  
EMPLOYER/SELF INSURED**

**RESPONDENT**

**OPINION FILED DECEMBER 13, 2023**

Hearing before Administrative Law Judge Steven Porch on December 8, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant represented himself *Pro Se*.

The Respondents were represented by Mr. Randy Isbell, Attorney at Law, Jonesboro, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a motion to dismiss filed by the Respondent on May 2, 2023, on this accepted claim. A hearing was set on August 25, 2023, in Jonesboro, Arkansas. The Respondent subsequently requested to have the motion held in abeyance after learning that Claimant had an issue with the payment of some of his medical bills. The Commission held the motion in abeyance. Respondent has now requested a hearing on its motion to dismiss, five months later, due to Claimant's lack of prosecution. A hearing on the motion was conducted on December 8, 2023, in Jonesboro, Arkansas. Claimant was present at the hearing when Respondent's counsel argued the motion.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including Commission's Exhibit 1, six pages of non-medical records, and the argument of both the pro se Claimant 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 and timely notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents did prove by a preponderance of the evidence that Claimant has failed to prosecute his 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.*

The evidence reflects that Claimant's injury occurred on October 15, 2021, when the plastic chain he was sitting on broke causing him to fall injuring his right leg and hip. Respondents accepted this claim as compensable and paid benefits. Since Claimant filed his Form C on September 16, 2022, this claim has been inactive.

After considering all of the evidence, I find that Respondents motion should be granted under Rule 13. Claimant stated during the hearing that he concedes to the dismissal of his claim because he feels he has been paid all of the benefits that he was owed. I have informed him that he did not have to concede to the dismissal and could request a full-hearing. Claimant expressed that he did not want a full-hearing. I further informed him that he is entitled to have an attorney present to represent him in this matter. He stated that he did not want an attorney. I also made the Claimant aware that he could speak with a legal advisor who could guide him on his claim. He stated that he did not want to use a legal advisor. He further advised the Commission that he has no desire in prosecuting this claim since he has received what he believes he is owed. Thus, I find that the Respondent has 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, Respondent's Motion to Dismiss is hereby granted *without prejudice*.

**IT IS SO ORDERED.**

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STEVEN PORCH  
Administrative Law Judge