

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H008491**

GREGORY WILLIAMS, EMPLOYEE

CLAIMANT

**MCILVEENE, INC. d/b/a
AMERICAN WHOLESALE GLASS,
EMPLOYER**

RESPONDENT

**STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY, INSURANCE CARRIER**

RESPONDENT

OPINION FILED MAY 11, 2023

Hearing before Administrative Law Judge Steven Porch on May 9, 2023 in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*.

The Respondents were represented by Mr. William Roy Sanders, Attorney at Law, Little Rock, 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 May 9, 2023, in Little Rock, Arkansas. Claimant, who is *pro se*, did not appear. Respondents were represented at the hearing by Mr. William Roy Sanders, Attorney at Law, of Little Rock, Arkansas. In addition to Respondent's argument, the record consists of the Commission's file—which has been incorporated herein in its entirety by reference.

The evidence reflects that per the First Report of Injury or Illness filed on February 26, 2020, Claimant purportedly injured his right knee/leg and other whole body at work on October 24, 2020 when a board broke while he was standing on it. According to Form AR-2 that was filed on November 6, 2020, Respondents accepted this injury as compensable and paid medical and indemnity benefits pursuant thereto. At some point

soon after, Claimant hired legal counsel Laura Beth York at Rainwater, Holt and Sexton firm, who filed Form AR-C, asking for a full range of benefits on March 29, 2021. However, on June 30, 2021, Ms. York filed a Motion to Withdraw from this case. This request was granted. Since then, this case has been inactive until Respondents filed a Motion to Dismiss due to the lack of prosecution. A hearing was set for May 9, 2023, in Little Rock, Arkansas on the Motion to Dismiss. The hearing took place as scheduled.

At the hearing and as previously stated, the Claimant did not appear and testify. Respondents argued for dismissal under Rule 13.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, and having had an opportunity to hear the sworn testimony of the Claimant, 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.

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.*

At the hearing, it was argued that Claimant refused to show up to two previously scheduled depositions and has not engaged in the prosecution of this matter. I find this argument has merit. I find nothing in the file demonstrating Claimant’s willingness to prosecute this matter.

After consideration of all the evidence, I find that Claimant and Respondents were given reasonable notice of 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 *without prejudice*.

CONCLUSION

Based on the findings of fact and conclusions of law set forth above, Respondents' Motion to Dismiss is hereby granted *without prejudice*.

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge