

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301091**

DIANA L. WATKINS, EMPLOYEE	CLAIMANT
SMITH HOUSE, INC., EMPLOYER	RESPONDENT
TECHNOLOGY INS. CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 12, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on October 6, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant, *pro se*.

Respondents represented by Mr. William C. Frye, Attorney at Law, North Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on Respondents' Motion to Dismiss. A hearing on the motion was conducted on October 6, 2023, in Jonesboro, Arkansas. Claimant, who is *pro se*, appeared in person and testified. Respondents were represented at the hearing by Mr. William C. Frye, Attorney at Law, of North Little Rock, Arkansas. In addition to Claimant's testimony, the record consists of (1) the Commission's file—which, without objection, has been incorporated herein in its entirety by reference; and Respondents' Exhibit 1, the complaint filed on January 6, 2023, in *Diana Watkins v. Houseworth Hotels, d/b/a Comfort Inn of Blytheville and Smith-House, Inc., d/b/a Comfort Inn of Blytheville*, Mississippi County Circuit Court No. 4BCV-23-4, consisting of five numbered pages.

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The evidence reflects that per the First Report of Injury or Illness filed on February 21, 2023, Claimant purportedly sustained injuries to her left foot and ankle on February 19, 2022, when she fell on a snow and ice-covered parking lot at work. According to the Form AR-2 that was filed on February 22, 2023, Respondents controverted the claim in its entirety. On February 16, 2023, Claimant (through then-counsel Kevin Graham) filed a Form AR-C. Therein, he clarified that the date of the injury was February 22, 2021, and alleged the following:

Diana Watkins was on the Comfort Inn Parking lot and had gone to her vehicle to retrieve a personal item. There had been three (3) record snow and ice storms. As she exited her vehicle, she took a step on her left foot and she fell due to the snow and ice. Employee sustained a left ankle fracture requiring surgery.

No hearing request accompanied this filing. Respondents' counsel made his entry of appearance before the Commission on February 23, 2023; and in an email on March 8, 2023, reiterated that the claim was being controverted in its entirety.

This alleged fall was also the subject of a civil action. On January 6, 2023, Claimant through Graham filed a lawsuit against Respondent employee and other parties in Mississippi County Circuit Court. Claimant later dismissed this action and terminated Graham's services. Following this, on May 1, 2023, he moved to withdraw from his representation of her in the instant claim as well. In an order entered on May 11, 2023, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action took place on the claim until August 9, 2023, when Respondents filed the instant Motion to Dismiss. Therein, they argued that dismissal was warranted under AWCC R. 099.13 because “no action has been taken in this matter since the Claimant filed the AR-C” The file was assigned to me on August 10, 2023; and on that same day, my office wrote Claimant, asking her to respond to the motion within 20 days. The letter was sent to her by first-class and certified mail. Claimant signed for the certified letter on August 15, 2023; and the first-class letter was not returned. Regardless, no response was forthcoming.

On August 31, 2023, I scheduled this hearing for October 6, 2023, at 10:30 a.m. at the Craighead County Courthouse in Jonesboro. The certified mailing to Claimant was claimed on September 2, 2023; and the first-class letter was not returned. During the hearing, Respondents argued for dismissal under Rule 13. Claimant opposed this.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of 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.

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2. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. The Motion to Dismiss should be, and hereby is, denied without prejudice.
5. Claimant has requested a hearing on this claim.
6. This claim will proceed to a hearing on the merits.

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,

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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, Claimant admitted that she received the Notice of Hearing. Asked to explain why she did not respond to the 20-day letter, she testified:

I was going to write you a letter, but my husband went in the hospital and I—and when he got out [of] the hospital he went right back and my 20 days was up. When I go[t] home from that last hospital visit, I was going to write you a letter and that’s when I got the letter about the hearing today from y’all.

She acknowledged that she did not seek an extension of time from my office within which to respond. Claimant also stated that she has been preoccupied with the aftermath of a motor vehicle accident in which she was involved earlier in 2023.

The following exchange took place:

Q. What, if anything, have you done since [Graham] withdrew from the case?

A. Nothing.

She has not treated for any of her alleged work-related injuries in over two years. It was her testimony that she missed eight months of work due to her alleged injuries.

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Claimant objected to dismissal of her claim, asked for a hearing thereon, and explained that her lack of pursuit of the matter thus far had been due to her being overwhelmed by events in her personal life, including her husband's hospitalization.

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the hearing on the Motion to Dismiss under Rule 13, Claimant has not yet abridged that rule. The Motion to Dismiss is thus denied without prejudice. Prehearing questionnaires will be immediately issued to the parties, and this matter 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 denied without prejudice.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge