BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H503192

JEREMY WEATHERFORD, EMPLOYEE	**CLAIMANT**
ABSOLUTE ROOFING & CONST. LLC, EMPLOYER	**RESPONDENT**
CAROLINA CASUALTY INS. CO., CARRIER	**RESPONDENT[1]**

OPINION FILED AUGUST 11, 2026

Hearing before Administrative Law Judge O. Milton Fine II on July 23, 2026, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Matthew J. Ketcham, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on July 23, 2026, in Little Rock, Arkansas. Claimant appeared at the hearing and gave testimony. Admitted into evidence were Commission Exhibit 1, certified mail receipts, consisting of two pages; Claimant's Exhibit 1, an OSHA report concerning Claimant's alleged accident along with a screenshot from a social media post, consisting of four pages; Respondents' Exhibit

[1]At the time the Motion to Dismiss was filed, the above-named Respondents were the only respondents to this claim—per the Form AR-C that was filed on May 23, 2025. *See infra*. That particular claim form is the only one that is the subject of the instant motion. As reflected in Joint Exhibit 1, on May 5, 2026, Claimant filed an amended Form AR-C, naming as additional respondents Construction Consulting LLC and its purported workers' compensation carrier, LM Insurance Corporation. Those latter two entities, and that latter claim form, are not the subject of this proceeding.

1, forms, pleadings, reports, and correspondence related to this claim, consisting of 33 pages; and Joint Exhibit 1 the amended Form AR-C filed May 5, 2026, along with an enclosure letter, consisting of two pages.

The record reflects the following procedural history:

On May 23, 2025, through counsel, Claimant filed a Form AR-C. Therein, he alleged that he suffered a closed-head injury, along with a broken nose and four fractured ribs, on May 15, 2024, when he suffered a 30-foot fall at work. The boxes on the form were checked to indicate that Claimant was seeking all manner of initial and additional benefits. Per the Form AR-2 that was filed by their counsel on June 5, 2024, Respondents denied the claim, stating that Claimant was actually employed by a subcontractor, Phil Pratt d/b/a Constructing Consulting LLC, and that the subcontractor provided Respondent Absolute Roofing with a certificate of workers' compensation coverage on March 1, 2024.

By letter to the Commission on November 21, 2025, Claimant's counsel requested a hearing on the claim. The file was assigned to Administrative Law Judge James Kennedy, who issued preliminary notices and prehearing questionnaires to the parties on November 21, 2025. The parties filed responses thereto. A prehearing telephone conference was scheduled on December 29, 2025, for February 2, 2026. Following that conference, by agreement of the parties, the file was returned to the Commission's general files because Claimant's counsel needed time to locate his client and provide responses to discovery.

Nothing further took place on the claim until April 30, 2026. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 (now codified as 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702 (a)(4) & (d) (Repl. 2012) due to Claimant's alleged failure to request a hearing within the previous six months. The file was assigned to me on May 1, 2026; and on that same date, my office wrote Claimant and his counsel, asking for a response to the motion within 20 days. "Kathy Weatherford" signed for Claimant's copy of the certified letter on May 13, 2026, and the first-class letter to him was not returned. But neither him nor his counsel responded to object to the dismissal.

On June 1, 2026, a hearing on the Motion to Dismiss was scheduled for July 23, 2026, at 11:30 a.m. at the Commission in Little Rock. Notice of said hearing was furnished to both Claimant and his attorney.

The hearing took place as scheduled. Both parties appeared, and Claimant testified. Respondents argued for dismissal under AWCC R. 099.13 (now codified at 11 C.A.R. § 25-110(d)) and Ark. Code Ann. § 11-9-702(d) (Repl. 2012), contending, inter alia, that Claimant has done nothing to prosecute his claim since its filing, including responding to discovery.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following Findings of Fact and Conclusions of Law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under 11 C.A.R. § 25-110(d).
4. Respondents have not proven by a preponderance of the evidence that this claim should be dismissed under Ark. Code Ann. § 11-9-702(d) (Repl. 2012).
5. The Motion to Dismiss is hereby denied.
6. Claimant has requested a hearing on the issue of his entitlement to initial benefits under this claim.
7. This claim for initial benefits will proceed to a hearing on the merits.
8. Claimant's counsel is hereby directed to respond to all outstanding discovery forthwith.

III. DISCUSSION

11 C.A.R. § 25-110(d) reads:

> 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).

In turn, Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) reads:

> If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim **may**, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

(Emphasis added)

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of the claim—by a preponderance of the evidence. This standard 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, Claimant testified that his attorney was unable to maintain contact with him because he has been in various treatment facilities due to the closed-head

injury that is the subject of this claim. He objected to a dismissal of his claim, and stated that he wishes a hearing thereon, in the event that it is not dismissed.

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the motion to dismiss hearing under § 25-110(d), he has not yet abridged that rule. By the same token, I find that while § 11-9-702(a)(4) provides that a claim "may" (clearly intending that the administrative law judge has discretion in the matter) be dismissed for failure to request a hearing within six months of the filing of the claim, dismissal is not yet warranted here. The Motion to Dismiss is thus denied.

Prehearing questionnaires will be immediately issued to all parties; and this claim will proceed to a full hearing on the merits. As part of this process, Claimant's counsel is hereby directed to respond to all outstanding discovery forthwith.

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the Motion to Dismiss is, respectfully, denied.

IT IS SO ORDERED.

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O. MILTON FINE II
Chief Administrative Law Judge