

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H204176**

MAXINE HARRIS, EMPLOYEE	CLAIMANT
WIS INTERNATIONAL, EMPLOYER	RESPONDENT
AIU INSURANCE COMPANY, INSURANCE COMPANY	RESPONDENT
GALLAGHER BASSETT SERVICE, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JUNE 28, 2023

Hearing before Administrative Law Judge Steven Porch on June 27, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Laura Beth York, Attorney at Law, Little Rock, Arkansas.

The Respondents were represented by Carol Lockard Worley, 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 June 27, 2023, in Little Rock, Arkansas. Claimant, who was represented by Attorney Laura Beth York, did appear for the hearing. Respondents were represented at the hearing by Attorney Carol Lockard Worley. In addition to Respondent's argument and Respondents' Exhibit "1", the record further consists of the Commission's file, which has been incorporated herein in its entirety by reference.

The evidence reflects that Claimant's injury occurred on May 11, 2022, where she purportedly injured her left knee and other whole body. This incident allegedly occurred when Claimant was on her knees counting materials for her employer. A hearing was

held on June 27, 2023, in Little Rock, Arkansas, on the Motion to Dismiss. And as previously stated, the Claimant and her attorney did appear for the hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, 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.*

After consideration of all the evidence, I find that Claimant and Respondents were given reasonable notice, at the addresses provided by each party, for the Motion to Dismiss hearing under Rule 13. I further find that Claimant has abridged this rule. Claimant's counsel agrees with this dismissal without prejudice. 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