

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205450**

STEVIE MASSEY, EMPLOYEE	CLAIMANT
ROCK N ROLL SUSHI, EMPLOYER	RESPONDENT
SEQUOIA INSURANCE COMPANY, INSURANCE COMPANY	RESPONDENT
AM TRUST NORTH AMERICA, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED JULY 12, 2023

Hearing before Administrative Law Judge Steven Porch on July 11, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is *Pro Se*.

The Respondents were represented by William C. Frye, Attorney at Law, North 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 July 11, 2023, in Little Rock, Arkansas. Claimant was *Pro Se* and did not appear for the hearing. Respondents were represented at the hearing by Attorney William C. Frye. In addition to Respondent's argument, 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 June 25, 2022, where she purportedly injured her knee resulting in a meniscus tear. This incident allegedly occurred when Claimant was walking down the stairs during the course and scope of employment.

A hearing was held on July 11, 2023, in Little Rock, Arkansas, on the Motion to Dismiss. And as previously stated, the Claimant did not 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 and Claimant's failure to appear, I find that Claimant was required to give the Commission her most current address. In that respect, I also find that Claimant was given reasonable notice, at her most current address, for the Motion to Dismiss hearing. I further find that Claimant has abridged Rule 13 by failing to prosecute her claim. Therefore, Respondent's Motion to Dismiss should be granted.

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