

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H206640**

**LATRELLE THOMPSON, EMPLOYEE**

**CLAIMANT**

**WR COMMUNITY SERVICES,  
EMPLOYER**

**RESPONDENT**

**LUBA CASUALTY INSURANCE COMPANY,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 17, 2023**

Hearing before Administrative Law Judge Steven Porch on May 11, 2023, in Pine Bluff, Pulaski County, Arkansas.

Claimant, *pro se*.

Respondents were represented by Mr. Jarrod S. Parrish, 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 11, 2023, in Pine Bluff, Arkansas. Claimant, who is *pro se*, did not appear for the hearing. Respondents were represented at the hearing by Mr. Jarrod S. Parrish, 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 and Commission Exhibit 1.

The evidence reflects that Claimant's injury occurred on August 18, 2022, where she purportedly injured her right shoulder, arm, wrist, and other whole body. This incident occurred when Claimant was helping a patient during the course and scope of employment. Claimant was able to secure legal counsel to represent her on this claim

through Mark Alan Peoples. However, Attorney Mark Alan Peoples withdrew as attorney of record effective November 1, 2022. 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 11, 2023, in Pine Bluff, Arkansas on the Motion to Dismiss. The hearing took place as scheduled 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, 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 her 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.*

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.

### **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.**

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STEVEN PORCH  
Administrative Law Judge