

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. G708180**

**CLINT VICK, EMPLOYEE**

**CLAIMANT**

**McGEHEE HOUSING AUTHORITY,  
SELF-INSURED EMPLOYER**

**RESPONDENT NO. 1**

**ARK. MUNICIPAL LEAGUE,  
THIRD PARTY ADMINISTRATOR**

**RESPONDENT NO. 1**

**DEATH & PERMANENT TOTAL  
DISABILITY TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED OCTOBER 7, 2022**

Hearing before Administrative Law Judge O. Milton Fine II on October 5, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*.

Respondents No. 1 represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2, represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas, excused from participation.

**I. BACKGROUND**

This matter comes before the Commission on the Motion to Dismiss by Respondents No. 1. A hearing on the motion was conducted on October 5, 2022, in Little Rock, Arkansas. Claimant, who is *pro se*, appeared in person. Respondents No. 1 were represented at the hearing by Ms. Mary K. Edwards, Attorney at Law, of North Little Rock, Arkansas. Respondent No. 2, represented by Christy L. King, Attorney at Law, of Little Rock, Arkansas, was excused from participation. The record consists of Respondents No. 1 Exhibit 1—forms,

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pleadings and correspondence related to the claim—along with Claimant’s testimony. In addition, the Commission’s file has been, without objection, incorporated herein in its entirety by reference.

Per the First Report of Injury or Illness filed on November 20, 2017, Claimant purportedly injured his leg on October 11, 2017, when he was involved in a motor vehicle accident. According to the Form AR-2 that was filed on November 21, 2017, Respondents denied the claim in its entirety.

Through then-counsel Laura Beth York of Rainwater, Holt & Sexton on October 22, 2018, Claimant filed a Form AR-C, requesting the full range of initial and additional benefits. Therein, she alleged: “Claimant was rear-ended in a motor vehicle accident while running errands in the course and scope of his employment [and] sustained injuries to his head, shoulders, hips, groin area, and other whole body.” A hearing request did not accompany this filing. In correspondence to the Commission on October 25, 2018, Respondents No. 1 reiterated that they were controverting the claim. On September 29, 2019, York requested a hearing on the claim, and filed a prehearing questionnaire response at the same time. The file was assigned to Administrative Law Judge Elizabeth Hogan on September 30; 2019. On October 1, 2019, Judge Hogan sent a prehearing questionnaire to Respondents No. 1. They filed a timely response thereto on October 17, 2019.

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A prehearing telephone conference took place on November 12, 2019. In the Prehearing Order that Judge Hogan entered pursuant to that conference, she scheduled a hearing for February 28, 2020, in McGehee on the following issues:

1. Whether Claimant sustained a compensable injury.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.
4. Whether Claimant is entitled to a controverted attorney's fee.

A copy of the Prehearing Order was sent to Claimant via certified mail. However, it was returned to the Commission, unclaimed, on December 10, 2019. Respondents No. 1 moved for a continuance of the hearing on February 6, 2020. Judge Hogan granted the motion and returned the file to the Commission's general files.

York refiled an identical copy of the previous Form AR-C ("For Statute Purposes") on August 19, 2020. No hearing request was included. However, just nine days later, she moved to withdraw her firm from their representation of Claimant. In an order entered on September 11, 2020, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that no further action was taken on this case until July 27, 2022. On that date, Respondents No. 1 filed the instant Motion to Dismiss under Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012) and AWCC R. 099.13. The file was assigned to Judge Katie Anderson on July 28, 2028; and on that same

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day, her office wrote Claimant, asking for a response to the Motion to Dismiss within 20 days. The correspondence was sent by certified and first-class mail to the address that Claimant listed on her Form AR-C. While the certified letter was returned to the Commission, undelivered, on August 24, 2022, the first-class letter was not returned. Regardless, no response from Claimant was forthcoming.

On August 31, 2022, Judge Anderson scheduled a hearing on the Motion to Dismiss for October 5, 2022, at 1:30 p.m. at the Commission in Little Rock. The hearing notice was sent to Claimant via certified and first-class mail at the same address as before. The United States Postal Service was unable to verify if Claimant claimed the certified letter. But Claimant testified that he received the first-class correspondence, and appeared at the hearing pursuant to it.

The hearing on the Motion to Dismiss proceeded as scheduled on October 5, 2022. Again, Claimant appeared at the hearing and testified in opposition to the motion. Respondent No. 2 waived its appearance. Respondents No. 1 appeared through counsel (who entered her appearance on July 27, 2022) and argued for dismissal under the aforementioned authorities.

## **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 the opportunity to observe Claimant and consider his testimony, I hereby make

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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 notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents No. 1 have not proven by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.
4. Respondents No. 1 have not proven by a preponderance of the evidence that dismissal of this claim is warranted under Ark. Code Ann. § 11-9-702(a)(4) (Repl. 2012).
5. Respondents' Motion to Dismiss should be, and hereby is, denied.
6. This claim will proceed to a hearing.

### **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). 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 be

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dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents No. 1 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.*

At the hearing, Claimant objected to a dismissal and testified that he was unaware that his attorney had been permitted to withdraw from his case. He attributed his lack of notice to his inconsistent mail delivery, and his failure to pursue his case more aggressively to his alleged work-related injuries. As a result of his alleged work-related motor vehicle accident, he had to undergo surgery. His son, who had been helping him manage his affairs, has now moved

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out. Claimant testified that he objects to dismissal of his claim. He is seeking a hearing on the matter of his entitlement to workers' compensable benefits in connection with his alleged injuries.

After consideration of the evidence, I find that the parties were given reasonable notice of the Motion to Dismiss hearing under Rule 13. I further find that Claimant has not yet abridged this rule. As for § 11-9-702(a)(4), the evidence preponderates that Claimant did make a bona fide hearing request; the reason the claim did not proceed to a hearing on that occasion in 2020 was due to a continuance that Respondents No. 1 sought. The Motion to Dismiss is thus respectfully denied.

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.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge