

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NOS. H402883 & H404599**

PAUL HORNER, EMPLOYEE

CLAIMANT

**CRAIGHEAD COUNTY,
SELF-INSURED EMPLOYER**

RESPONDENT

**AAC RISK MGMT. SVCS.,
CARRIER**

RESPONDENT

OPINION FILED JUNE 10, 2026

Hearing before Administrative Law Judge O. Milton Fine II on June 5, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant, represented by Mr. Daniel E. Wren, Wren Law Firm, Little Rock, Arkansas.

Respondents represented by Mr. Jarrod S. Parrish, Worley, Wood & Parrish, P.A., Little Rock, Arkansas.

I. BACKGROUND

These matters come before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on June 5, 2026, in Jonesboro, Arkansas. Claimant appeared at the hearing through counsel and gave testimony. Admitted into evidence were Respondents' Exhibits 1 and 2, forms, pleadings, and correspondence related to H404599 and H402883, respectively; and consisting of one index page and 11 numbered pages thereafter, and one index page and 10 numbered pages thereafter, respectively.

The evidentiary record shows the following procedural histories:

H402883. Per the Form AR-C that Claimant filed through counsel on July 18, 2024, Claimant purportedly suffered an injury to his right shoulder at work on

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January 9, 2024, when he was tazed during training. He checked the boxes of the form to indicate that he was seeking the full range of initial and additional benefits. According to the Form AR-2 that was filed on May 2, 2024, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

H404599. Per the Form AR-C that Claimant filed through counsel on July 18, 2024, Claimant purportedly suffered an injury to his left hip at work on October 23, 2023, when he tripped over a buckle in the floor. He checked the boxes of the form to indicate that he was seeking the full range of initial and additional benefits. Per the Form AR-2 filed on May 2, 2024, Respondents accepted the claim as medical-only. But in an amended AR-2 filed on August 21, 2024, Respondents reported that they were also paying indemnity benefits in connection with the claim.

The record reflects that nothing further took place on either claim until March 17, 2026. On that date, Respondents filed the instant motion, asking for dismissal of the claims because Claimant “has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” The files were assigned to me on March 18, 2026; and on March 19, 2026, my office wrote Claimant and his counsel, asking for a response to the motion within 20 days. Claimant’s counsel did so on March 30, 2026, writing:

Before I request a hearing on these claims, I plan to take the deposition of Dr. Holland. Dr. Holland is the treating physician that

said the pre-existing degenerative issues were the major cause of the need for hip replacement.

My office is currently attempting to get dates from Dr. Holland regarding his availability for a deposition. Once I have obtained Dr. Holland's deposition, I will be filing a hearing [request] for permanent partial disability, wage loss and attorney fee[s] on both of these claims.

Therefore, the Claimant asks that the Respondent[s'] Motion to Dismiss be denied.

Because Claimant did not request a hearing on the merits of his claims, I scheduled a hearing on the Motion to Dismiss for June 5, 2026, at 12:00 p.m. at the Craighead County Courthouse in Jonesboro. In his testimony, Claimant confirmed that he received the Notice of Hearing.

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).

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 matter.

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 claims 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 additional benefits under both claims.
7. These claims will proceed to a hearing on the merits.

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(d) (Repl. 2012) reads:

If within six (6) months after the filing of a claim for additional 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 period specified in subsection (b) 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's counsel acknowledged that he erred in not requesting a hearing on the claims—as he told the Commission he would—after Dr. Holland was deposed. The deposition took place on April 28, 2026, over a

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month before this hearing. In turn, his client testified that he is objecting to a dismissal of his claims, and that he wishes a hearing thereon, in the event that they are 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(d) 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 the parties; and both of these claims will proceed to a full hearing on the merits.

IV. CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents’ Motion to Dismiss is hereby respectfully denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge