

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H208573**

DONNA JACKSON, EMPLOYEE

CLAIMANT

**STAGEHANDS LLC,
EMPLOYER**

RESPONDENT

**OHIO SECURITY INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED JUNE 20, 2025

Hearing before Administrative Law Judge O. Milton Fine II on June 19, 2025, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Jason M. Ryburn, Ryburn Law Firm, Attorneys at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on June 19, 2025, in Little Rock, Arkansas. The testimony of Claimant was taken in the case. Admitted into evidence were Commission Exhibit 1 (see Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must “conduct the hearing . . . in a manner which best ascertains the rights of the parties”) and Respondents’ Exhibit 1, forms, pleadings, and correspondence related to this claim, consisting of 31 pages; and Claimant’s Exhibit 1, medical records, consisting of 17 pages.

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The record shows the following procedural history:

Per the First Report of Injury or Illness filed on December 9, 2022, Claimant purportedly suffered a shoulder injury at work on November 25, 2022, when she was struck by a metal pole that was being handled by a co-worker. According to the amended Forms AR-2 that were filed on December 15, 2022, January 25, 2023, and August 29, 2023, Respondents accepted the claim as compensable and paid medical and indemnity benefits pursuant thereto.

On December 21, 2022, through then-counsel Laura Beth York, Claimant filed a Form AR-C. Therein, Claimant requested the full range of initial and additional benefits and alleged that she suffered “injuries to her left shoulder, back, and other whole body” on the date in question. No hearing request accompanied this filing.

On March 27, 2023, York moved to withdraw from her representation of Claimant. In an Order entered on April 7, 2023, the Full Commission granted the motion under AWCC Advisory 2003-2.

Claimant, now *pro se*, filed another Form AR-C on July 10, 2023. Therein, she stated that her back and shoulder were injured at Robinson Auditorium when a co-worker dropped a two-foot length of pipe from 100 feet above in “retileation” [sic]. Per an order entered on October 28, 2024, the Medical Cost Containment Division of the Commission granted Claimant’s request for a one-time change of physician to Dr. Nicole Rinewalt, and scheduled an appointment for her with the

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physician for November 13, 2024. The next day, November 14, 2024, the Commission received written correspondence from Claimant that reads: “I am requesting a hearing to get Medical bill and Los[t] wages paid for the anxi[e]ty and PTSD that has incur[r]ed since injury.”

Due to the failure to set up a legal advisor conference and/or a mediation conference, the Legal Advisory Division asked the Clerk of the Commission to reassign the file to the Adjudication Division. The file was assigned to me on January 8, 2025; and on January 14, 2025, my office sent preliminary notices and prehearing questionnaires to the parties. Claimant filed her Preliminary Notice on January 27, 2025. Therein, she represented that while the value of her claim was in excess of \$2,500.00, she was amenable to mediation. She also furnished a signed medical release. Respondents’ counsel entered his appearance on February 14, 2025. Through his client’s Preliminary Notice, counsel likewise agreed to voluntary mediation. As a result, on February 20, 2025, the file was transferred back to the Legal Advisory Division to conduct the mediation. However, on February 28, 2025, the mediatory returned the file to the Commission’s general files because of the parties’ unwillingness to mediate or litigate the claim at that time.

The record reflects that nothing further took place on the claim until April 22, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under AWCC R. 099.13 because Claimant had not been prosecuting

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her claim. The file was reassigned to me that same day; and also on that date, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Little Rock, Arkansas address for Claimant that was listed in the file and on her Forms AR-C. A “John Jackson” signed for the certified letter on April 26, 2025; and the first-class letter was not returned. Regardless, no response to the motion was forthcoming from Claimant. On May 14, 2025, a hearing on the Motion to Dismiss was scheduled for June 19, 2025, at 9:30 a.m. at the Commission in Little Rock. The Notice of Hearing was sent to Claimant by certified and first-class mail to the same address as before. In this instance, the certified mailing was returned to the Commission, unclaimed, on June 12, 2025. But once again, the first-class mailing was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled. Both parties appeared at the hearing pursuant to the Notice of Hearing, and Claimant gave testimony. Respondents appeared through counsel and argued for dismissal under the foregoing authority.

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 claim.
2. All parties received notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents have not proven by a preponderance of the evidence that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby denied.
5. Claimant has requested a hearing on the issue of her entitlement to initial and additional benefits.
6. This claim will proceed to a hearing on the merits.

III. DISCUSSION

AWCC R. 099.13 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).

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

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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.*

Claimant testified that the reason that she had not renewed her request for a hearing on her claim after the mediation was cancelled was that (1) she was seeking counsel; (2) she understood from the Legal Advisor whom she consulted that there was nothing more for her to do at this point; (3) and she "was doing well" and (4) she suffers from anxiety. Claimant requested a hearing on her claim, in the event that it is 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

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under Rule 13, she has not yet abridged that rule. The Motion to Dismiss is thus denied.

Prehearing questionnaires will be immediately issued to the parties; and this claim 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 respectfully denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge