

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H306170**

ROSHANDRA RAY, EMPLOYEE	CLAIMANT
HINO MTRS. MFG. USA, INC., EMPLOYER	RESPONDENT
FIRST LIBERTY INS. CORP., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 30, 2024

Hearing before Administrative Law Judge O. Milton Fine II on September 27, 2024, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*.

Respondents represented by Mr. Jason M. Ryburn, Attorney 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 September 27, 2024, in Forrest City, Arkansas. Claimant, *pro se*, appeared¹ at the hearing and gave testimony. Respondents appeared through above-captioned counsel. Admitted into evidence was Commission Exhibit 1, forms, pleadings, and correspondence

¹As the record reflects, Claimant was late for the hearing. I began the hearing promptly at 10:31 a.m., noted her absence, admitted Commission Exhibit 1 into evidence, allowed Respondents' counsel to make his presentation in support of his client's motion, and then closed the record. Shortly thereafter, Claimant appeared. Because the hearing was being held during a heavy rainstorm and because I accepted Claimant's excuse that the inclement weather made her tardy, the record was re-opened. Thereafter, Respondents' counsel essentially repeated his earlier arguments, and Claimant objected to the Motion to Dismiss and gave testimony.

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related to this claim, consisting of 14 pages. 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”).

The record shows the following procedural history:

The First Report of Injury or Illness, filed on September 21, 2023, reflects that Claimant purportedly suffered an injury to her hand at work on September 14, 2023, when she reached for a part on the assembly line and was struck by a brake assembly. Per the original and amended Forms AR-2 that were filed on September 27 and October 4, 2023, respectively, Respondents accepted the claim and paid medical and indemnity benefits pursuant thereto.

On February 15, 2024, through then-counsel Mark Alan Peoples, Claimant filed a Form AR-C, alleging that she suffered a crush injury to her hand on August 9, 2023. The full range of additional benefits was requested. No hearing request accompanied this filing. Respondents’ counsel entered his appearance on February 23, 2024.

On June 24, 2024, Peoples moved to withdraw from his representation of Claimant. In an Order entered on July 10, 2024, the Full Commission granted the motion under AWCC Advisory 2003-2.

The record reflects that nothing further took place on the claim until July 25, 2024. On that date, Respondents filed the instant motion, asking for dismissal of the claim because “[n]o substantial efforts to prosecute the claim have been made

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and no hearing has been requested in the past six months.” My office wrote Claimant on July 29, 2024, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the Forrest City, Arkansas address for her listed in the file and on the Form AR-C. The United States Postal Service has been unable to verify whether Claimant claimed the certified letter; but the first-class letter was not returned. Regardless, no response from her to the motion was forthcoming. On August 28, 2024, a hearing on the Motion to Dismiss was scheduled for September 27, 2024, at 10:30 a.m. at the St. Francis County Courthouse in Forrest City. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, the certified letter was returned to the Commission, unclaimed, on September 26, 2024. But the first-class letter was not returned.

The hearing on the Motion to Dismiss proceeded as scheduled on September 27, 2024. Again, Claimant appeared at the hearing to object to dismissal of her claim. Respondents appeared through counsel and argued for dismissal under AWCC R. 099.13 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):

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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 her claim under AWCC R. 099.13.
4. Respondents have not proven by a preponderance of the evidence that dismissal of this claim is warranted under Ark. Code Ann. § 11-9-702(d) (Repl. 2012).
5. The Motion to Dismiss should be, and hereby is, denied without prejudice.
6. Claimant has requested a hearing on this claim.
7. 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). In turn, § 11-9-702(d) provides:

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

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of the claim within limitation periods specified in subsection (b) of this section.

(Emphasis added) 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.*

At the hearing, Claimant testified that the reason that she has not acted to prosecute her claim since her attorney’s withdrawal was because she was unsure of what to do. In addition, she explained that she did not receive either version of the 20-day letter or the certified mailing of the Notice of Hearing, explaining that her mail is mis-delivered at times to a neighbor. The neighbor is disabled, making

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retrieval of the mail difficult. Claimant further testified that she continues to have problems with her left hand and arm as a result of her alleged work-related incident, that she objects to the dismissal of her claim, and that she wants a hearing on her entitlement to additional treatment.

After consideration of the evidence, I find that while both Claimant and Respondents were given reasonable notice of the Motion to Dismiss hearing under Rule 13, she 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.

Based on Claimant’s hearing request, prehearing questionnaires will be immediately issued to the parties, and this matter will proceed to a full hearing on the merits.

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

O. MILTON FINE II
Chief Administrative Law Judge