

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F208170

CHARLENE LOCUST, Employee	CLAIMANT
MCKEE FOODS CORPORATION, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION & ORDER FILED SEPTEMBER 11, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

OPINION & ORDER

This case comes on for review following a hearing on respondent's Motion to Dismiss.

After my review of respondent's Motion to Dismiss, the evidence submitted at the hearing on this motion, and all other matters properly before the Commission, I find that respondent's motion to dismiss for failure to prosecute should be and hereby is denied.

On July 14, 2003, respondent filed a motion to dismiss the claim alleging that a hearing had not been requested in this case since the pre-hearing conference of January 8, 2003. As a result, respondent requested a dismissal without prejudice pursuant to Commission Rule 13. At claimant's request, a hearing on respondent's motion to dismiss was conducted on August 20, 2003. In response to respondent's motion, claimant noted that an order had been entered on July 3, 2003, finding that claimant's authorized treating physician was to be Dr. James Kelly of Fort Smith.

Given the fact that an order had been entered allowing claimant to change physicians to Dr. Kelly on July 3, 2003, I do not find that claimant has failed to prosecute her claim. Therefore, I find that respondent's Motion to Dismiss should be and hereby is denied.

Also at the hearing claimant's attorney requested a reasonable attorney fee. I find that this request should be denied. First, an attorney fee cannot be awarded unless it is specifically provided for by statute. *Arkansas-Oklahoma Gas Corporation v. Waelder Oil and Gas, Inc.*, 332 Ark. 548, 966 S.W. 2d 259 (1998). A review of the attorney fee statute codified at A.C.A. §11-9-714 fails to authorize attorney fees in this type of case. I do note that A.C.A. §11-9-715(a)(2)(C)(i) states that if the Commission finds a claim has not been controverted but does find that bona fide legal services have been rendered in respect to the claim, then the Commission may direct payment of the fees by the injured employee out of the compensation awarded. Thus, this statute requires that the fee be paid by the injured employee out of compensation awarded. Here, claimant's attorney is not requesting a fee from the injured employee but rather from the respondent. Furthermore, there has been no compensation awarded. Accordingly, I find that claimant's request for an attorney fee should be denied.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE