

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213628

FELIX G. RAMIREZ, Employee	CLAIMANT
LDS, LLC, Employer	RESPONDENT
FARMERS INSURANCE GROUP, Carrier	RESPONDENT

OPINION & ORDER FILED JULY 21, 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 MELISSA ROSS, Attorney, Little Rock, Arkansas.

OPINION & ORDER

_____ This case comes on for review following a hearing on respondent's motion to dismiss.

After my review of the 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 May 13, 2003, a motion to dismiss for failure to prosecute was received from the respondent. By letter dated May 13, 2003, claimant's attorney requested that the case be sent to an administrative law judge and that respondent be required to come to Springdale to factually prove claimant's failure to prosecute. This letter was interpreted by the Commission clerk and by this administrative law judge as a request for a hearing. As a result, a hearing was scheduled for July 2, 2003. At that hearing, claimant submitted documentary evidence, including a letter to claimant's treating physician, Dr. James Moore, dated April 29, 2003, requesting that Dr. Moore clarify whether there is anything else which can be done on claimant's behalf with regard to his compensable injury. Claimant has not yet received a response from Dr. Moore. Based upon this evidence indicating that claimant is in the process of attempting to determine whether he is in need of additional medical

treatment or whether anything else can be done for his compensable injury, I find that the claimant is not failing to prosecute his claim and therefore find that the respondent's motion to dismiss for failure to prosecute should be denied.

At the end of the hearing claimant's attorney requested a reasonable attorney fee. I find that this request should be denied. First, attorney fees cannot be awarded unless specifically provided for by statute. *Arkansas Oklahoma Gas Corporation v. Waelder Oil & 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, the 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.

Subsequent to the hearing the respondent also filed a motion for costs and attorney fees in connection with this case. Again, the statute does not authorize attorney fees in this situation. Furthermore, I do not believe attorney fees and costs for the respondent would be appropriate for appearing at a hearing which was conducted for the purpose of its own motion and upon which it did not prevail. Accordingly, I find that the respondent's motion for attorney fees and costs should be and hereby is denied.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE