

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107072

JAMES CALHOUN, EMPLOYEE	CLAIMANT
WAGSTER AGRICULTURE SERVICES, INC., EMPLOYER	RESPONDENT
THE ZENITH INS. CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 20, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 20, 2004, at Little Rock, Arkansas.

Claimant pro se.

Respondents represented by THE HONORABLE J. MATTHEW MAULDIN, Attorney-At-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim on the motion of respondents to dismiss same with prejudice.

A pre-hearing conference was conducted in this claim on December 7, 2004, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects the stipulation entered by the party, the issue to be addressed during the course of the hearing, and the parties' respective position relative to same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

Claimant failed to appear to provide testimony regarding his claim or respondents' motion to dismiss same. Respondents have heretofore filed a motion to dismiss the June 11,

2001, claim of the claimant with prejudice, as well as a supporting brief. Claimant was previously represented by counsel who filed November 22, 2004, reply to respondent's motion to dismiss. The motion of respondents to dismiss along with the brief in support of same coupled with the reply file on behalf of the claimant comprise the record in this claim. During the course of the hearing respondents' amended their pleading to a prayer of relief of dismissal without prejudice.

DISCUSSION

James M. Calhoun, the claimant, with a date of birth of September 5, 1964, commenced his employment with respondent on April 6, 2001, as a truck driver. Claimant last discharged employment duties for respondent on June 11, 2001.

On June 11, 2001, claimant suffered multiple body injuries when, while making a water delivery, his truck was struck by a train as claimant was driving across railroad track. Respondents paid initial medical bill on behalf of the claimant, however controverted the payment of further workers' compensation benefits after claimant's drug screen test returned positive for the presence of illegal drugs.

A form AR-C dated October 10, 2002, was filed by the claimant with the Arkansas Workers' Compensation Commission on October 28, 2002, seeking permanent total disability benefits for injuries growing out of the June 11, 2001, accident. The workers' compensation benefits claimed by the claimant are reflected as "initial benefits". Aside from the filing of the AR-C, there is no evidence in the record to reflect that claimant or his former attorney took any affirmative action to pursue his claim for workers' compensation benefits. There is no evidence in the record to reflect that a hearing before the Arkansas Worker's Compensation Commission

was request by claimant relative to the benefits identified on the AR-C.

Upon being informed by the Arkansas Workers' Compensation Commission of the filing of the claimant's AR-C, respondents relayed that the claim had been controverted with the filing of the July 5, 2001, Form AR-2, Employers Report of Intention to Controvert, positive drug test of the claimant following the accident.

Respondents argue that the present claim should be dismissed for want of prosecution, pursuant to Rule 13 of the Arkansas Workers' Compensation Commission, and pursuant to Due Process. Commission Rule 13 provides that upon meritorious application from either party to the Commission, requesting that a 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.

The claimant's filing of a claim for workers's compensation reflects a claim for initial benefits pursuant to Ark. Code Ann. § 11-9-702 (a) (Repl. 2002). Initial claims must be filed within two (2) years of the date of injury. After the filing of a claim for initial benefits if a hearing is not requested within six (6) months, the claim may be dismissed without prejudice following the filing of a motion for such relief and a hearing. *Dillard v. Benton County Sheriff's Office*, ___ Ark. App. ___ (September 22, 2004).

In the instant claim, claimant was fully aware of the scheduled December 20, 2004, hearing on the motion of respondents to dismiss the claim. Claimant had participated in the December 7, 2004, pre-hearing conference. Claimant, through his action, has demonstrated that he has no intentions of pursuing a claim for workers' compensation benefits growing out of the June 11, 2001, accident. According, there can be no benefit realized to either party in allowing the present claim to remain an active open claim.

IT IS THEREFORE ORDERED that the present claim growing out of the June 11, 2001, accident of the claimant should be and is dismissed without prejudice.

IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge