BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303468

A. K. MAY, EMPLOYEE	CLAIMANT
MAVERICK TUBE, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 16, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on November 12, 2004, at Forrest City, St. Francis County, Arkansas.

Claimant failing to appear.

Respondents represented by Mr. John D. Davis, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 12, 2004, to determine whether the claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

The claimant filed a Commission Form AR-C dated March 31, 2003, claiming benefits related to an alleged accident and injury on October 6, 2002. Respondents controverted the claim in its entirety. No further action was taken until a request for a hearing was filed on April 20, 2004, which prompted various prehearing procedures. A Prehearing Questionnaire was sent to both parties on June 28, 2004. The claimant failed and/or refused to respond. Respondents submitted prehearing information filings, again, controverting the

claim in its entirety. (Resp. Ex. 1 – 2)

Because the claimant did not respond to the Prehearing Questionnaire, the claim was returned to the Commission's general files on July 28, 2004. (Resp. Ex. 3)

Respondents subsequently filed a Motion to Dismiss for Want of Prosecution. (Resp. Ex. 4)

By letter dated September 29, 2004, the claimant was advised that a request for dismissal of his claim had been filed and that unless written objection was received within thirty (30) days, an appropriate Order would be filed. The claimant received said notice as reflected by Certified Mail – Return Receipt with date of delivery October 6, 2004.

Pursuant to a recent decision, Dilliard vs. Benton County Sheriff's Office, ____ Ark. App. ___, ____ S.W.3d ___ (September 22, 2004) (C.A. 04-025), a hearing was scheduled for November 12, 2004. The subject of the hearing was "Respondents' Motion to Dismiss." The Notice indicated failure to appear would result in the dismissal of the claim. Said Notice was sent Certified Mail – Return Receipt Requested (Resp. Ex. 5), and was received by the claimant on November 5, 2004, as reflected by Return Receipt #7100 0000 0000 0042 9526.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over

this claim.

2. On or about March 31, 2003, the claimant filed a claim for an alleged injury dated October 6, 2002.

3. The claimant has failed to prosecute his claim.

4. Respondents have controverted this claim in its entirety.

DISCUSSION

As reflected by the documentary evidence, the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to written notices would result in a dismissal of his claim. A hearing was also scheduled pursuant to Ark. Code Ann. §11-9-702(a)(4). The claimant failed to appear. Further, the limitation periods specified in A.C.A. §11-9-702(a)(1) – (3) have expired. Accordingly, respondents' request that this claim be dismissed, with prejudice, is hereby granted.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge