

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312522

HASSEL RACKLEY, EMPLOYEE	CLAIMANT
ROBERTSON CONTRACTORS, INC., EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 13, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on December 9, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant failing to appear.

Respondents represented by Mr. David C. Jones, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 9, 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 immediate claim concerns an alleged accident occurring on or about November 13, 2003. The respondents have controverted this claim in its entirety based upon a positive drug screen. Although the claimant has never filed a Commission Form AR-C, he did request a hearing on his claim, while, at the same time, agreeing to participate in a voluntary mediation conference. In fact, this claim was scheduled for a mediation conference to be conducted on March 26, 2004, in Newport, Arkansas, which was apparently cancelled

because of the claimant's failure to respond to the Notice of Mediation.

Thereafter, respondents filed its Motion to Dismiss the claim for failure to prosecute. Numerous notices were sent to the claimant advising him that his failure to respond would result in a dismissal of the claim. At respondents' request, pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___ (September 22, 2004 (C.A. 04-025) a hearing was scheduled on December 9, 2004. The subject of the hearing was respondents' Motion to Dismiss. The notice indicated failure to appear would result in dismissal of the claim. Said notice was sent to the claimant both certified mail, return receipt requested, as well as first-class mail. The claimant failed and/or refused to appear.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant has failed to prosecute his claim.
3. Respondents have controverted this claim in its entirety.

DISCUSSION

_____ Documentary evidence was introduced reflecting that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to written notices, as well as to appear at a scheduled hearing, would result in a dismissal of his claim. A hearing was

scheduled pursuant to Ark. Code Ann. § 11-9-702(a)(4). The claimant failed to appear. In view of the foregoing, this claim is hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of this claim if filed within the statutory limits imposed by Arkansas Law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge