

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F306721**

**PATRICIA D. ADKINS, EMPLOYEE** **CLAIMANT**

**ST. VINCENT HEALTH SERVICE, INC.,  
EMPLOYER** **RESPONDENT**

**PREFERRED PROFESSIONAL INSURANCE  
COMPANY, INSURANCE CARRIER** **RESPONDENT**

**OPINION FILED DECEMBER 16, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on December 13, 2005, Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Mr. Walter A. Murray, Attorney at Law, Little Rock, Arkansas.

A hearing was held on December 13, 2005, to determine whether the above-referenced claim should be dismissed for want of prosecution pursuant to Rule 13 of the Rules of the Arkansas Workers' Compensation Commission, as well as Ark. Code Ann. § 11-9-702(d).

The hearing was scheduled on respondents' Motion to Dismiss filed October 20, 2005, pursuant to Ark. Code Ann. § 11-9-702(d) and Rule 13 of the Commission. A certificate of service was sent to the claimant. Claimant filed no written response to respondents' motion but appeared for the hearing to contest the Motion to Dismiss.

After review of the file and testimony of the claimant at the hearing, I find that respondents' motion should, at this time, be denied.

### **STATEMENT OF THE CASE**

The claimant filed with the Commission on September 25, 2003, a Form AR-C seeking benefits for injuries she allegedly sustained on July 15, 2001. She was represented by counsel, Mr. Robert Buckalew, at the time the Form AR-C was filed. Respondents controverted the claim, and the case was then assigned to an Administrative Law Judge.

After much discovery was conducted, a prehearing telephone conference was held on January 3, 2005. At that time, the matter was set for a full hearing to be conducted on April 21, 2005. On April 19, 2005, Mr. Buckalew notified the Commission via letter that his client, Ms. Adkins, had decided to seek other counsel. As such, the hearing set for April 21, 2005, was canceled in order to give claimant an opportunity to consult with and obtain subsequent counsel. According to the file, Mr. Buckalew finally formally notified Ms. Adkins that he was withdrawing as her counsel on May 11, 2005, and an order relieving him as counsel was filed on May 12, 2005. No action was subsequently taken, and the case was returned to general files on August 25, 2005.

On October 20, 2005, respondents filed a Motion to Dismiss for Want of Prosecution, noting that claimant had failed to request a new hearing within six

months from the date the last hearing was set and then cancelled, that being April 21, 2005. Respondents moved to dismiss pursuant to Ark. Code Ann. § 11-9-702(d) and Rule 13 of the Commission. Claimant failed to respond to the motion but did appear for the hearing on the motion. A hearing was held on the motion on December 13, 2005.

Claimant credibly testified that she did not fire Mr. Buckalew, but rather, he had chosen to withdraw as her counsel and that she was never really certain why he had done that. She testified that he gave her some names of other attorneys to contact for possible representation, but that she had been unsuccessful at obtaining new counsel. She said she could not get anyone to take her case. She testified that it is her desire that her case not be dismissed and that she wishes to go forward and represent herself, if necessary.

#### **FINDINGS OF FACT**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. On September 25, 2003, claimant filed a Form AR-C seeking benefits for her alleged 2001 injuries and was represented by counsel;
3. A full hearing was set to be conducted on April 21, 2005;

4. On April 19, 2005, counsel for claimant notified the Commission that claimant wished to seek other counsel and the April 21, 2005, hearing was canceled;
5. Claimant's counsel withdrew and was relieved as counsel on May 12, 2005;
6. The file was returned to general files on August 25, 2005, due to inactivity;
7. On October 20, 2005, respondents filed a Motion to Dismiss for Want of Prosecution;
8. Claimant failed to file a written response to respondents' Motion to Dismiss;
9. The claimant did appear, pro se, at the scheduled hearing on the motion on December 13, 2005, to request that her case not be dismissed;
10. Respondents' motion to dismiss is denied at this time.

### **DISCUSSION**

A review of the evidence shows the claimant failed to request a hearing within six months after cancellation of the full hearing set for April 21, 2005; however, she did appear at the scheduled hearing on the motion to dismiss, testified that she had actively been pursuing representation, and expressed a willingness to pursue her claim pro se, if necessary.

Arkansas Code Annotated § 11-9-702(d) states as follows:

If, within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim *may*, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

[Emphasis added.]

Moreover, Rule 13 of the Rules of the Arkansas Workers' Compensation Commission states, in part, as follows:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the 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. (Effective March 1, 1982.)

[Emphasis added.]

Because of claimant's appearance at the hearing on the motion to dismiss, her credible testimony that she has actively pursued representation since her lawyer withdrew, and her indication that she wishes to pursue her claim on her own, if necessary, respondents' motion to dismiss this case for failure to prosecute pursuant to Rule 13, as well as claimant's failure to request a hearing within six months, pursuant to Ark. Code Ann. § 11-9-702(d), is denied at this time.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge