

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304706

BILLY R. ALLEN, EMPLOYEE	CLAIMANT
PROSPECT STEEL COMPANY, EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE, CARRIER	RESPONDENT

OPINION FILED MARCH 16, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on March 11, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondents represented by the HONORABLE COLIN P. WALL, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was scheduled to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear at the hearing.

The respondents filed a Motion to Dismiss on January 31, 2005 with a Brief in support of the Motion pursuant to Ark. Code Ann. §11-9-702(a)(4) and Rule 13 of the Commission. A certificate of service was sent to the claimant, but he did not respond to the Motion. A second Notice was sent to the claimant by the Commission on February 1, 2005 by certified mail, setting a deadline for the claimant to respond to the Motion. To date, there has been no reply.

After a review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and therefore, the respondent's Motion is granted.

STATEMENT OF THE CASE

A review of the respondents' documentary evidence shows the claimant filed an AR-C on May 7, 2003 for a left shoulder injury which occurred sometime during September 2002. On May 14, 2003 the carrier notified the Commission that the claim was controverted. The claimant requested a hearing in a letter filed September 9, 2003, and the respondents initiated discovery October 28, 2003. The Commission sent out a Prehearing Notice on October 22, 2003, giving the parties deadlines to file their questionnaires and exhibits. The respondents complied and filed their response on December 8, 2003. To date, the claimant has never filed a prehearing questionnaire or exhibits. On November 18, 2003, the Commission returned the case to general files due to the claimant's failure to respond. Since then, the claimant has not requested another hearing.

The respondents then filed a Motion to Dismiss and the hearing notice was sent out on February 16, 2005 by certified mail at the request of the respondent, pursuant to Dillard v. Benton County Sheriff's Office, ___ Ark. App. ___, ___ S.W.3d ___ (9-22-04/CA 04-025).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but he has failed to respond to written notices and failed to appear at the scheduled hearing. The claimant has not requested a hearing within the last six months.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):
If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refile of the claim within limitation periods

specified in subdivisions (a)(1)-(3) of this section.

Rule 13:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Ark. Code Ann. §11-9-702.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge