

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501197

JOSEPH BAILEY, EMPLOYEE	CLAIMANT
USA TRUCK, INC., EMPLOYER	RESPONDENT
USA TRUCK, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 1, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on October 27, 2005, at Marion, Crittenden County, Arkansas.

Claimant failed to appear.

Respondent represented by Mr. J. Rodney Mills, Attorney-at-Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled on October 27, 2005, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

This claim concerns an alleged injury occurring on or about February 1, 2005. Respondents have controverted the claim in its entirety, maintaining that the alleged injury did not arise out of and in the course of claimant's employment, specifically, that the claimant was not performing employment services at the time of the alleged injury.

A procedural history of this claim is warranted. As previously noted, the claim concerns a February 1, 2005, alleged injury. A Commission Form AR-C, filing a claim for initial benefits, was filed by the claimant, appearing *pro se*, on or about

February 18, 2005. By letter dated February 24, 2005, respondents denied the claim. The claimant subsequently retained the services of an attorney, Ms. Emily S. Paul, who requested a hearing on claimant's behalf. Prehearing Questionnaires were sent to both parties. The claimant failed to respond to the Prehearing Questionnaire. Thereafter, by letter dated June 14, 2005, claimant's attorney filed a Motion to Withdraw as Counsel. An Order was filed June 15, 2005, permitting claimant's counsel to withdraw as attorney of record. The claimant was advised that he had failed to respond to the Prehearing Questionnaire within the time allocated. He was further advised that he could seek a new attorney and request a hearing or proceed in his own behalf by contacting the Commission's Clerk. The claimant took no further action. Thereafter, respondents filed a Motion to Dismiss. By letter dated September 21, 2005, this Commission advised the claimant that a Motion to Dismiss had been filed in his claim and further advised that failure to respond within twenty (20) days could result in the dismissal of his claim. Said notice was sent both Certified Mail, Return Receipt Requested, as well as First-Class Mail and was delivered to the claimant on September 24, 2005, as reflected by return receipt of the notice. A second notice was sent October 14, 2005, scheduling a hearing on the Motion. Again, the notice of the hearing was sent both Certified Mail, Return Receipt Requested, and First-Class Mail. The notice was delivered to the claimant on October 19, 2005, as reflected by the return receipt. The subject of the hearing was the Motion to Dismiss the claim. The claimant failed to appear at the

scheduled hearing. Respondent moved for dismissal of the claim without prejudice.

In view of the foregoing, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant filed a claim for benefits alleging a February 1, 2005, injury.
3. Respondent has controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 13.

DISCUSSION

_____ Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim and the documentary evidence introduced reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to prior notices, as well as to appear at the scheduled hearing, would result in the dismissal of his claim. A hearing was scheduled at respondents' request pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___ (C.A. 04-025, Opinion delivered September 22, 2004).

After full consideration of the facts, issues, and the law, with notice of the hearing having been sent to the claimant, without objection thereto, it is hereby

determined that this claim should be, and it is, hereby dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702(a)(4).

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