

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211940

BOBBY BONDS, EMPLOYEE	CLAIMANT
LENNOX INDUSTRIES, EMPLOYER	RESPONDENT
LUMBERMENS MUTUAL CASUALTY CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 24, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on September 29, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JAMES W. STANLEY, JR., Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, ___, Ark. App. ___, ___ S.W.3d ___ (2004).

After hearing testimony from the claimant and reviewing the Commission's file, I find the respondents' Motion to Dismiss should be denied.

STATEMENT OF THE CASE

In April, 2004, the Medical Cost Containment Division granted a change of physician to Dr. Thomas Hart. The respondents paid the initial visit but controverted continuing medical treatment as unreasonable, unnecessary and unrelated to the compensable injury (see Ms. Demory's letter of July 7, 2004).

Mr. Stanley requested a hearing by correspondence dated September 23, 2004. After discovery, depositions, receipt of the claimant's prehearing questionnaire and exhibits, and a prehearing telephone conference, a hearing was scheduled for March 11, 2005. A continuance was granted to the claimant on March 10, 2005. The claimant made no effort to return the case to the hearing docket and the respondents filed a Motion to Dismiss on June 21, 2005. The claimant responded in an equivocal fashion on June 27, 2005, but still did not request a hearing.

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 refiling 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)

It is evident that the issue of Dr. Hart's continuing treatment has been ripe for adjudication for over one year (see Mr. Stanley's correspondence of June 30, 2004). Despite the delays in litigation, the claimant is still interested in pursuing this claim and therefore, this case will be reset for another hearing.

I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. For good cause shown, the claimant's objection to the dismissal is sustained and the respondents' Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge