

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407815

ANN CALLOWAY

CLAIMANT

**WAL-MART STORES, INC.
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED APRIL 14, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE AMY S. HUFFMAN, Attorney at Law, Little Rock, Arkansas.

ISSUES

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

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed February 8, 2005, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant and she advised the Commission in person that she would not appear.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing her claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claimant filed a written request for benefits for a July 16, 2004, right elbow

injury. An AR-2 filed August 17, 2004, indicates this claim was a medical only claim. Claimant has made no further requests for benefits.

The respondents filed a motion to dismiss and the hearing notice was mailed on March 16, 2005, in accordance with *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 her case but 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 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)

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 with prejudice for failure to prosecute pursuant to Rule 13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**