

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407836

LARRY R. CAMPBELL, EMPLOYEE	CLAIMANT
ESTES EXPRESS LINES, EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE, CARRIER	RESPONDENT

OPINION FILED AUGUST 30, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 26, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondents represented by the HONORABLE WILLIAM C. FRYE, 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.

After review of the Commission's file, I find the respondents' Motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C on August 23, 2004 for a November 18, 2002 injury to his back and knees. He filed hearing requests on September 16, 2004 and February 1, 2005 and spoke with the Legal Advisors on several occasions (see their call sheets dated September 14, 2004, October 7, 2004). Mediation was declined by the respondents and the case was assigned to an Adjudication on October 11, 2004. A prehearing conference was scheduled and orders were issued on December 8, 2004 and March 8, 2005. Discovery was completed by June 14, 2005.

The respondents filed a Motion to Dismiss on July 20, 2005 and a second notice was sent to the claimant on July 25, 2005 by the Commission. To date there has been no reply. All notices have been sent to the claimant by certified mail to his last known address and no correspondence has been returned.

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 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 hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge