

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500937

BRUCE COLE, EMPLOYEE

CLAIMANT

PINNACLE FRAMES & ACCENTS, EMPLOYER

RESPONDENT

CONTINENTAL CASUALTY CO., CARRIER

RESPONDENT

OPINION FILED NOVEMBER 29, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 28, 2005, at Piggott, Clay County, Arkansas.

Claimant pro se.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled in the above-referenced claim to determine the claimant's entitlement to workers' compensation benefits.

On April 5, 2005, a pre-hearing conference was conducted in this claim and a Pre-hearing Order entered scheduling a June 17, 2005, Jonesboro, Arkansas hearing before the Arkansas Workers' Compensation Commission. On June 13, 2005, another telephone conference was conducted had at which time claimant requested a continuance of the scheduled June 17, 2005, hearing in order to secure the services of an attorney. Pursuant to the afore, the hearing was rescheduled for August 19, 2005, at 10:30 A.M., in the circuit courtroom 4-C, Craighead County Courthouse Annex, 511 Union Street, Jonesboro, Arkansas.

On July 12, 2005, a pre-hearing conference was conducted in the claim. As a

consequence of the afore, the hearing was rescheduled to September 16, 2005, at 10:00 A.M., for the same location. On the date and time of the scheduled hearing the attorney for respondents appeared with several witnesses. The docket was sounded at the designated time of the hearing and claimant failed to appear. As a consequence of the claimant's failure to appear respondents requested that the claim be dismissed. The motion was taken under advisement.

Approximately one hour following the scheduled September 16, 2005, 10:00 a.m. hearing the claimant arrived with his wife. Claimant explained that his delay was attributable to the fact he lived in Missouri, was not familiar with the Jonesboro area, and had become lost while attempting to reach Jonesboro. The attorney for respondents and his witnesses had been excused along with the court reporter by the time the claimant arrived.

The claimant having offered a credible explanation for his failure to appear at the designated time of the September 16, 2005, hearing, the motion of respondents to dismiss was denied. In correspondence of September 20, 2005, discovery deadline dates were set forth and the parties were notified of the date and location of the new hearing setting. A September 19, 2005, Re-scheduled Pre-hearing Order and Hearing Notice was mailed to the parties. The Re-scheduling Order as well as the September 20, 2005, correspondence identified the location of the 2:30 p.m. October 28, 2005, hearing as the Clay County Circuit Courthouse, 151 S. 2nd Ave., Piggott, Arkansas.

On October 28, 2005, the docket was sounded at the designed time of the scheduled hearing. Claimant failed to appear. Respondents appeared through their attorney and had in attendance several witnesses to provide testimony in the claim. The September 19, 2005, Re-scheduled Pre-hearing Order and Hearing Notice was mailed to the parties by certified mail,

return receipt requested. The return receipt mailed to the address of the claimant as reflected in the Commission's file was signed for by someone at the residence on September 23, 2005, although the signature is not legible.

The claimant and his wife were informed that the rescheduled hearing would be held in Piggott, Arkansas, for their convenience as well as that of the witnesses for respondents. Respondent-employer is located in Piggott. All parties were notified of the date, and location of the hearing in the September 20, 2005, correspondence from the Commission. Finally, the Reschedule Pre-hearing Order and Hearing Notice of September 19, 2005, recited the date, time and location of the scheduled October 28, 2005, hearing.

There is no evidence in the record to reflect that the claimant has complied with the directive regarding discovery as reflected in the September 20, 2005, correspondence. Further, the claimant has not contacted the Commission since September 16, 2005, to offer an explanation for his failure to attend the scheduled October 28, 2005, hearing.

IT IS THEREFORE ORDERED that the motion of the respondents to dismiss this claim for want of prosecution is herein granted in accordance with Rule 13, of the Arkansas Workers' Compensation Commission, the claimant having failed to appear at the scheduled October 28, 2005, hearing or offer a credible explanation for said failure. Further, the claim of the claimant is dismissed without prejudice for the failure of the claimant to comply with discovery directives in accordance with the September 20, 2005, correspondence of the Commission.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge