

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F009650

CLAY D. CRABTREE, JR., EMPLOYEE	CLAIMANT
CITY OF PINE BLUFF, EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WCT, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on September 15, 2005, at Pine Bluff, Jefferson County, Arkansas.

Claimant did not appear.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, 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 review of the Commission's file, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant sustained a right wrist injury on January 29, 2000. The claim was accepted as compensable and the claimant came under the care of Dr. Michael Moore. The claimant was treated with medication and diagnostic testing (MRI and CT scan) before surgeries were performed for arthrodesis and midcarpal instability with later removal of hardware. The claimant was released for light duty on June 14, 2000 and regular duty on June 20, 2001 and September 19, 2001. He was assessed a 30% impairment rating on June 20, 2001.

The claimant was represented by Attorney Gary Davis from April 29, 2002 to August 12, 2005. An issue regarding additional temporary total disability benefits was resolved by agreement in a prehearing order dated September 9, 2003. The claimant has returned to work and the respondents have paid all appropriate benefits and expenses.

On August 12, 2005 the Commission sent the claimant a letter asking him to advise in writing if he planned to pursue his case by a deadline. To date, there has been no written objection to dismissal of the claim.

The claimant called the Commission the week before the hearing and was referred to the Legal Advisor Division.

There has been no activity in the Commission's file for some time; it appears all appropriate benefits have been paid; there are no issues requiring a hearing; all notices have been sent to the claimant's last known address by certified mail; and the claimant has had the opportunity to consult a private attorney and the Legal Advisors with the Commission.

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 refile 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