

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312433

VERA DAVIS, EMPLOYEE

CLAIMANT

WAL-MART STORES, SELF-INSURED EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC., TPA

RESPONDENT

AMENDED OPINION FILED DECEMBER 7, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 10, 2005, at Forrest City, St. Francis County, Arkansas.

Claimant pro se.

Respondent represented by the HONORABLE JONATHAN R. STREIT, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 27, 2005, a per-hearing conference was conducted in this claim on the motion of respondent to dismiss the claimant's claim for want of prosecution. Claimant failed to participate in the pre-hearing conference or to submit a responsive filing to the pre-hearing questionnaire.

The evidence in the record reflects that on or about November 15, 2003, claimant, through her attorney, filed a Form AR-C, asserting entitlement to workers' compensation benefits as a result of an injury to her left hand, arm and wrist having been sustained within the course and scope of her employment with respondent in September 2002. Following the filing of the

claim respondent on or about December 4, 2003, filed a Form AR-2 reflecting controversion of the compensability of the claim.

The evidence in the record reflects that on or about December 10, 2003, respondent's attorney served discovery upon the claimant through her attorney. A March 1, 2004, correspondence of respondent's attorney reflects that while the claimant's deposition was obtained responses to discovery had not been received from the claimant. In a April 12, 2004, correspondence respondent again solicited the claimant's responses to its discovery.

As a result of the claimant's failure to response to the discovery request of respondent a August 31, 2004, Order of Dismissal was entered in the claim. Thereafter, claimant, through her attorney re-filed her September 1, 2002, claim. The claim was again assigned to an Administrative Law Judge and the pre-hearing process initiated with a September 19, 2004, notice forwarding the pre-hearing questionnaires and scheduling a December 14, 2004, pre-hearing conference.

The claimant failed to submit responsive filing to the pre-hearing questionnaire in accordance with the September 19, 2004, notice. As a consequence of the afore, the scheduled December 14, 2004, pre-hearing conference was not had. The file was returned to the general files of the Commission, and the claimant notified that should she again desire a scheduled hearing in the claim, to submit her responsive filing to the pre-hearing questionnaire along with her hearing request to the office of the Clerk of the Commission. Nonetheless, in correspondence of January 10, 2005, to the Clerk of the Commission, claimant, through her attorney requested that her claim be assigned to an Administrative Law Judge for a scheduled hearing "on the issues of compensability, impairment rating, controvrision and attorney's fees". A responsive filing to

the previously forwarded pre-hearing questionnaire was not included.

In correspondence of January 19, 2005, claimant was notified, through her attorney, that the pre-hearing conference would not be scheduled in her claim until receipt of the responsive filing to the pre-hearing questionnaire. On March 1, 2005, claimant was notified that due to the failure on her part, through her attorney, to submit a responsive filing to the pre-hearing questionnaire the file would again be returned to the general files section of the Commission.

Respondent filed a motion to dismiss the claimant's claim for want of prosecution. On September 27, 2005, a pre-hearing conference was conducted on the motion, and a Pre-hearing Order and Hearing Notice of the same date was filed scheduling a November 10, 2005, hearing on the motion in Forrest City District Court, 615 East Cross Street, Forrest City, Arkansas. In correspondence of October 2, 2005, claimant's attorney relayed his desire to be relieved of council in the claim due to the failure of the claimant to respond or contact him for an extended period of time. An Order granting the afore relief was entered on October 14, 2005.

In correspondence of October 17, 2005, the parties, claimant and respondent's attorney, were notified that the scheduled November 10, 2005, hearing would proceed. On November 10, 2005, at the designated time, the docket was sounded. Claimant failed to appear. Respondent submitted documentary evidence and arguments supportive of its motion to dismiss the claim for want of prosecution.

IT IS THEREFORE ORDERED that the motion of respondent to dismiss the claim of the claimant relative to a September 1, 2002, claimed injury is herein granted without prejudice for want of prosecution and in accordance with Rule 13, of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge