

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410905

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| JENNIFER FARIES, EMPLOYEE | CLAIMANT |
| TOBACCO SUPERSTORES, INC., EMPLOYER | RESPONDENT |
| WESTPORT INSURANCE CORPORATION, INSURANCE CARRIER/ GALLAGHER BASSETT SERVICES, INC./TPA | RESPONDENT |

OPINION AND ORDER FILED OCTOBER 10, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on October 7, 2005, at Osceola, Mississippi County, Arkansas.

Claimant appeared, *pro se*.

Respondents represented by Mr. Colin P. Wall, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 7, 2005, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 13.

This claim concerns an alleged accident and injury of September 23, 2004. Respondents have controverted the claim in its entirety, maintaining that the claimant's alleged injury did not arise out of and in the course of claimant's employment, specifically maintaining that the claimant was not performing employment services at the time of the alleged injury.

A procedural history of the claim is warranted. The claimant requested a hearing on her claim by letter dated November 8, 2004, which was received by the

Commission on November 10, 2004. Respondents filed a Commission Form AR-2 controverting the claim in its entirety. On December 21, 2004, a Prehearing Questionnaire was sent to both parties. Contemporaneous with the Prehearing Questionnaire, a letter was sent to the claimant, advising her of her rights to be represented by an attorney at any hearing or conference which might be conducted in this matter, as well as providing the claimant with a toll-free number should she wish to contact a Commission's legal advisor to discuss her claim. Because the claimant failed to file a response to the Prehearing Questionnaire, her claim was returned to the Commission's general files on January 19, 2005, with instructions to both parties that no further action would be taken in this matter unless the office of the Clerk of the Commission was notified in writing to reassign the case to an administrative law judge. On or about August 11, 2005, respondents filed a Motion to Dismiss, together with a Brief in Support of its Motion which was apparently sent to the claimant as reflected by certificate of service on August 10, 2005. Thereafter, this administrative law judge sent the claimant a letter dated August 12, 2005, advising her that the Motion had been filed and that failure to respond to the Motion or request a hearing within twenty (20) days could result in the dismissal of her claim. Said notice was sent certified mail, return receipt requested and was received by the claimant on August 30, 2005, as reflected by return receipt of the certified mail. On September 7, 2005, a hearing was scheduled on respondents' Motion to Dismiss the claim pursuant to respondents' request based upon a recent

Arkansas Court of Appeals decision, Dillard vs. Benton County Sheriff's Office, ___ Ark. App. ___, ___ S.W.3d ___ (C.A.04-025, Opinion Delivered September 22, 2004).

As reflected above, the claimant appeared at the October 7, 2005, hearing. She specifically objected to the dismissal of her claim while maintaining that she sent a letter to the Commission objecting to the dismissal and requesting a hearing in response to the aforementioned August 12, 2005, letter. Following further discussion it was determined that the claimant sent an undated letter addressed to respondents' attorney c/o of the Arkansas Workers' Compensation Commission which was received by the Clerk of the Commission on September 2, 2005. It was apparent from the discussion at the October 7, 2005, hearing that the claimant had indeed attempted to pursue her claim, but had failed to respond to the proper parties.

Respondents, by and through its attorney, pointed out that the claimant had failed to respond to interrogatories previously propounded and had failed to sign a medical authorization which the claimant denied receiving. The claimant signed the medical authorization at the October 7, 2005, hearing. She was further directed and ordered to respond to the written interrogatories within twenty (20) days.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The claimant has filed a claim for benefits alleging a September 23, 2004, injury.
3. Respondents have controverted this claim in its entirety.
4. This claim should not be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4) and/or Commission Rule 13.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim and the documentary evidence reflects that the claimant wishes to pursue her claim for workers' compensation benefits, and that any failure to pursue the claim is based upon a lack of understanding of the legal and procedural requirements of the Act. The claimant has requested additional time to answer interrogatories previously propounded which must be answered within twenty (20) days. In addition, the claimant has requested leave to again attempt to consult with an attorney prior to proceeding. By agreement of both parties, and consistent with the directives announced at the October 7, 2005, hearing, a prehearing conference will be scheduled at which time all issues can be properly addressed and the matter scheduled for a formal hearing on the merits.

ORDER

The claimant is hereby directed and ordered to answer interrogatories, hand delivered at the October 7, 2005, hearing on or before October 27, 2005, and return

them to the attorney for the respondents, Mr. Colin P. Wall, at the address provided by this transmittal letter.

After full consideration of the facts, issues, and the law, together with the claimant's objection to the dismissal, it is hereby determined that respondents' Motion should be, and it is hereby denied.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge