

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212571

SHAWN GENTRY, EMPLOYEE	CLAIMANT
DASSAULT FALCON, EMPLOYER	RESPONDENT
EMPLOYERS INSURANCE COMPANY OF WAUSAU, CARRIER	RESPONDENT

OPINION FILED MARCH 10, 2005

Hearing held February 10, 2005, before the Honorable Dale Douthit, Administrative Law Judge, at Little Rock, Pulaski County, Arkansas.

Claimant, of Benton, Arkansas, was unrepresented and did not appear at the hearing.

Respondents were represented by Guy A. Wade, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the captioned claim on February 10, 2005, upon motion of respondents to determine whether this claim should be dismissed for lack of prosecution pursuant to A.C.A. §11-9-702 and Commission Rule 13.

In a letter dated October 25, 2004, claimant was advised by this Commission that he had seven (7) days within which to respond to a Prehearing Questionnaire that had been mailed to him on September 10, 2004, in response to his request for a hearing in this workers' compensation claim. In a letter dated December 1, 2004, under the signature of this Administrative Law Judge, claimant was advised this file was being returned to the Commission's general files due to his failure to respond to the aforementioned Prehearing Questionnaire and his telephone conversation with my administrative assistant wherein he advised the issue had been resolved.

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On December 14, 2004, respondents counsel, Guy A. Wade, filed a Motion to Dismiss this claim alleging lack of prosecution.

In a letter dated January 4, 2005 under signature of this Administrative Law Judge claimant was advised of the Motion to Dismiss having been filed by respondents' counsel and given ten (10) business days in which to respond. No response to that letter was received by this Commission.

On January 25, 2005, this Administrative Law Judge caused a notice to be sent to the parties setting a hearing on Respondents' Motion to Dismiss for February 10, 2005. Said Notice was sent to claimant by Certified Mail - Return Receipt Requested. The notice indicated that failure to appear would result in dismissal of the claim. During the regular course of business the United States Postal Service delivered said correspondence to claimant and he accepted delivery on 2/1/05 as evidenced by the US Postal Service Certified Mail Return Receipt. (CX-3) After claimant received the certified letter he filed no response to the Motion to Dismiss, nor any reply to this ALJ. Subsequently, he failed and/or refused to appear at the February 10, 2005 hearing on Respondents' Motion to Dismiss.

That pursuant to the recent decision of the Arkansas Court of Appeals in *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S. W. 3d ___ (Sept. 22, 2004, CA 04-025), this matter came on for a hearing to determine respondents' Motion to Dismiss. The claimant failed to appear after receiving notice by certified mail.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The Claimant has failed to prosecute his claim.
3. Respondents initially accepted this claim as compensable and paid certain benefits.
4. The claimant was released to return to work in July of 2003.

Discussion

Documentary evidence was introduced reflecting that claimant has failed and/or refused to prosecute his claim. Claimant has been advised that his failure to respond to written notices, as well as to appear at a scheduled hearing, would result in a dismissal of his claim. A hearing was scheduled pursuant to A.C.A. §11-9-720(1)(4). Claimant failed to appear at said hearing after having been served proper notice by certified mail all matters and things considered, this claim is hereby dismissed without prejudice.

This Order shall not be construed to affect the refilling of this claim if filed within the statutory limits imposed by Arkansas Law.

IT IS SO ORDERED.

DALE DOUTHIT
ADMINISTRATIVE LAW JUDGE