

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310929

OTILLA L. GOLDEN, EMPLOYEE	CLAIMANT
MILWAUKEE ELECTRIC TOOL CORPORATION, EMPLOYER	RESPONDENT
LIBERTY MUTUAL FIRE INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED NOVEMBER 3, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on October 28, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Philip M. Wilson, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Eric Newkirk, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled for October 28, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Alternatively, the hearing was scheduled to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

This claim concerns an alleged accident and injury occurring on or before March, 2003. Respondents have controverted the claim in its entirety, maintaining that the claimant did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A procedural history of the claim is warranted. Again, respondents have

controverted the claim in its entirety. The claimant initially requested a hearing on or about October 23, 2003, at which time she was acting *pro se*. The claimant subsequently retained the services of an attorney and discovery was initiated by both parties, and the claim was returned to general files. Following lengthy delays without pursuing the claim, respondents filed a Motion to Dismiss for want of prosecution. Claimant's attorney objected and an Order was filed April 26, 2005, denying respondents' Motion to Dismiss, at which time the prehearing process was initiated. Because the claimant failed and/or refused to respond to prehearing questionnaires, the claim was, again, returned to the Commission's general files. Claimant's attorney subsequently requested yet another hearing; however, the claimant failed and/or refused to make herself available for a discovery deposition. A prehearing conference was conducted on August 31, 2005, as reflected by a Prehearing Order filed said date, at which time the claim was scheduled for a formal hearing on October 28, 2005.

By agreement of the parties, the following issues were to be presented for determination:

- 1) Compensability.
- 2) If answered affirmatively, claimant's entitlement to associated benefits.
- 3) Whether the claim should be dismissed for want of prosecution.

The claimant was advised that she must immediately make herself available for a discovery deposition. If the deposition was not completed within thirty (30)

days, the sole issue to be presented for determination at the scheduled hearing would be respondents' Motion to Dismiss for want of prosecution.

The claimant failed to appear for deposition, as well as the scheduled hearing. Her attorney, Mr. Philip M. Wilson, advised that his client had failed to communicate with his office. Respondents, again, moved for a dismissal of the claim for want of prosecution. It introduced various documents in support of its Motion.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant filed a claim for an alleged work-related injury which she maintained occurred on or before March 1, 2003, as the result of repetitive work activities.
3. The claimant has failed to prosecute her claim.
4. Respondents have controverted this claim in its entirety.
5. This claim should be dismissed for want of prosecution pursuant to 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

introduced reflects that the claimant has failed and/or refused to prosecute her claim. The claimant has been advised that her failure to respond to prior notices, as well as to appear at the scheduled hearing, would result in the dismissal of her claim. A hearing was scheduled at respondents' request pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___ (C.A. 04-025, Opinion delivered September 22, 2004).

After full consideration of the facts, issues, and the law, and notice of this hearing having been sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed with prejudice pursuant to Commission Rule 13.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge