

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F402762

**SHARON GREEN,
EMPLOYEE**

CLAIMANT

**AMERICAN GREETINGS CORP.,
EMPLOYER**

RESPONDENT

**AMERICAN ZURICH INS. CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 16, 2005.

Pursuant to a hearing conducted June 21, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Colin P. Wall, Attorney at Law, Little Rock, Arkansas, appearing for the respondents; and

Ms. Sharon Green, the claimant, proceeding pro se.

STATEMENT OF THE CASE

This is a hearing to consider the motion, filed on behalf of the respondents, asking that the claim be dismissed for failure to prosecute. No written response was filed on behalf of the claimant. However, the claimant appeared at the hearing and offered testimony concerning her claim.

The claimant testified that she had worked for the employer for over three years, and, at the time of her injuries, January 27, 2004, she was a merchandiser. She explained that her duties including stocking cards, gift wraps, gift wrap bags, and paper and that she went to various stores to help put product out into the stores. She stated that her work involved constant heavy lifting.

It was her contention that she injured both shoulder at work as a result of lifting boxes that had been wedged into a shopping cart. She stated that she thought she was hurt but did not think much of it until she could not move her right arm. She stated that her right shoulder was frozen and the left shoulder had a torn rotator cuff injury. Thus, she did not report the injury until March, 2004.

She testified that the employer sent her to the company doctor and physical therapy was started on her shoulders. She further testified that the therapy was painful and that the respondents paid for only six visits and then terminated all payments. The record shows that the respondents filed a First Report of Injury with the Commission on March 15, 2004, and then filed a Form AR-2 March 22, 2004, indicating that the claim was being controverted.

On May 10, 2004, the claimant's request to change physicians to a doctor in Hot Springs was received by the Commission. This request was denied by the Administrator of the Medical Cost Containment Division in a letter dated May 18, 2004, which explained that the denial was based on controversion of the claim.

Thereafter, the claimant requested a hearing and a prehearing conference was scheduled for September 3, 2004. The respondents filed a preliminary notice and their responses to the prehearing questionnaire and also asked the claimant to execute a medical authorization and Commission authorization and to respond to interrogatories and request for production of documents. The claimant did not respond to these discovery requests and also requested that the telephone prehearing conference be cancelled.

At the hearing, the claimant testified that she did wish to pursue her claim and explained that while talking to the Legal Advisors she was told that she could get a lawyer but that it was not stressed that she really needed a lawyer. At the hearing, she was specifically told that she really needed an attorney, although she is not required to have one. The claimant testified that somewhere down the road she thought she probably would need medical care but that she did not guess she needed any more physical therapy right now. She was also advised of the two year statute of limitations and that her claim could be timely re-filed, even if it is dismissed without prejudice, if

filed within the two-year period. The claimant was strongly cautioned to re-file the claim well within the period of the statute of limitations. At the end of the hearing, the claimant was asked by respondent's counsel to sign medical authorizations and she refused.

Accordingly, based upon a review of the record, the claimant's testimony, and the failure of the claimant to prosecute this claim, it appears that the motion should be, and it is hereby, granted, and this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge