

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404754

LINDA GREER, EMPLOYEE	CLAIMANT
CARE IV HOMEHEALTH, INC., EMPLOYER	RESPONDENT
ESIS, CARRIER	RESPONDENT

OPINION FILED DECEMBER 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on December 21, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant did not appear.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, ___ Ark. App. ___, ___ S.W.3d ___ (2004).

After review of the Commission's file, I find the Motion should be granted.

STATEMENT OF THE CASE

_____The claimant was formerly represented by Michael Knollmeyer. The claimant filed a Form AR-C on April 7, 2004 but the claim was controverted on April 30, 2004 by the respondents' filing of a Form AR-2.

A prehearing conference was held and an order was issued on July 21, 2004, setting this case for a hearing on October 8, 2004. At the request of the claimant, the hearing was cancelled.

The respondents filed a Motion to Dismiss the claim on November 7, 2005. Mr. Knollmeyer withdrew as attorney of record on November 21, 2005. Thereafter, all

correspondence was sent to the claimant directly by certified mail.

A telephone message was received from the claimant, advising that she was undergoing medical treatment. She was asked to provide additional information but to date, there has been no reply.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):
If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 13:
The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 13..

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge