

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205675

THOMAS A. HALLETT, EMPLOYEE	CLAIMANT
UPS, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 21, 2005

Hearing held July 14, 2005, before the HONORABLE DALE DOOUTHIT, Administrative Law Judge, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by HON. THOMAS MICKEL, Attorney at Law, Conway, Arkansas.

Respondents were represented by HON. JAMES ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on July 14, 2005, in Little Rock, Arkansas, to determine whether the above-captioned claim should be dismissed for want of prosecution pursuant to Commission Rule 13 and A.C.A. §11-9-702.

This claim concerns an alleged injury occurring on or about April 10, 2002. Respondents have controverted the claim in its entirety.

After respondents filed a Commission Form AR-2 controverting the claim, the claimant wrote a letter -filed with the Commission on August 25, 2003-requesting a

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hearing. Subsequently, a prehearing questionnaire was sent out to claimant; however, claimant failed to respond.

On September 2, 2004, the Commission received a letter from the claimant advising his address was 101 Waterplant Road - Morrilton, AR. All subsequent notices and correspondence sent to the claimant after September 2, 2004 were addressed to the 101 Waterplant Road - Morrilton, AR address.

On September 14, 2004 the Honorable James Arnold entered his appearance on behalf of the respondents. On September 16, 2005 Honorable Thomas Mickel made his appearance on behalf of the claimant, and stated he was not requesting a hearing at that time. Due to Mr. Mickel stating there was no request for a hearing, the claim was sent back to the Commission's general files on September 22, 2004, at the direction of the administrative law judge to which the claim was assigned.

The AWCC file reflects no other activity or request for hearing until the respondents filed a motion to dismiss for lack of prosecution on May 18, 2005. Upon receipt of the respondents motion, this administrative law judge sent copies of the motion to Attorney Thomas Mickel and to the claimant at his last known address. The claimant's copy was sent by both first class and certified mail on May 23, 2005. The claimant's certified mail was returned unclaimed; however, the first class mail was never returned.

More than twenty (20) days past without claimant responding to the motion

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to dismiss, and on June 13, 2005 this administrative law judge sent out hearing notices to claimant's attorney and to the claimant. The claimant's notice was sent by both first class and certified mail. Once again, the certified mail was returned unclaimed, but the first class mail was never returned. The notice of hearing set the hearing on Respondents' Motion to Dismiss for July 14, 2005 at 9:30 a.m.

At the July 14, 2005 hearing, claimant's attorney appeared; however, the claimant failed to appear.

At the hearing, claimant's attorney indicated he had the same address for his client as the Commission's file reflects. Claimant's attorney also indicated he had not had contact with his client in some time and could not in good faith pose any kind of objection to the pending motion.

Commission Rule 13 states that:

"Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claimant 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."

A hearing was scheduled at respondents' request pursuant to **Dillard v. Benton Co. Sheriff Office**, ___ Ark. App. ___, ___ S. W. 3d ___, (C.A. 04-025, opinion delivered September 22, 2004.) The claimant failed to appear at the hearing after reasonable notice was provided. Further, the claimant has failed to respond to the

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motion to dismiss and is wholly in default.

For the reasons recited herein, and after full consideration of the facts outlined in the transcript from the July 14, 2005 hearing, I hereby find the above-captioned claim shall be dismissed without prejudice due to claimant's failure to adequately prosecute his claim pursuant to Commission Rule 13, and A.C.A. §11-9-702(a)(4).

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

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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