

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F502662

MAURICE KIRK, EMPLOYEE

CLAIMANT

**SONOCO PRODUCTS CO.,
EMPLOYER**

RESPONDENT

**ACE AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 29, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on September 29, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondents represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

A hearing was held on September 29, 2005, to determine whether the above-referenced claim should be dismissed for want of prosecution.

The hearing was scheduled on respondents' Motion to Dismiss for Want of Prosecution filed August 2, 2005, pursuant to Rule 13 of the Commission. Claimant was notified by certified mail of respondents' motion to dismiss and given an opportunity to respond. Claimant was further notified by certified mail of the hearing scheduled for today's date and was notified by certified mail of a change in the time of the scheduled hearing. All certificates of service were introduced into the record

showing that all mail was returned “unclaimed.” Claimant did not appear for the hearing.

After review of the documentary exhibits filed by respondents, I find that as of the date of the hearing in this matter, claimant has not been diligent in pursuing his claim. As such, respondents’ motion is granted.

STATEMENT OF THE CASE

The claimant filed, pro se, an AR-C request for benefits on March 14, 2005, for an alleged injury to his neck, which allegedly occurred on February 5, 2005.

Respondents then filed, on August 2, 2005, a Motion for Want of Prosecution pursuant to Commission Rule 13. A hearing was set for September 29, 2005, to consider respondents’ motion, in accordance with *Dillard v. Benton County Sheriff’s Office*, ___ Ark. App. ___, ___ S.W.3d ___ (9-22-04/CA 04-025).

As of the date of the hearing in this matter, six months has elapsed since the filing of the claim for compensation, and claimant has made no bona fide request for a hearing with respect to his claim.

FINDINGS OF FACT

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim;
2. On March 14, 2005, claimant filed an AR-C request for benefits;

3. On August 2, 2005, respondents filed a Motion to Dismiss for Want of Prosecution pursuant to Commission Rule 13;
4. A hearing was set for September 29, 2005, to consider respondents' motion;
5. Claimant was notified by certified mail of said hearing;
6. The claimant failed to appear at the initial hearing pursuant to Rule 13;
7. As of the date of the hearing in this matter, six months has elapsed since the filing of the claim for compensation, and claimant has made no bona fide request for a hearing with respect to his claim, pursuant to Ark. Code Ann. § 11-9-702;
8. Claimant has not been diligent in pursuing his claim;
9. Respondents' motion to dismiss is granted;
10. Claimant's claim is dismissed without prejudice.

DISCUSSION

A review of the evidence shows the claimant has had ample opportunity to pursue his case but has chosen not to and failed to appear at the scheduled hearing.

Rule 13 of the Rules of the Arkansas Workers' Compensation Commission states as follows:

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.)

Further, Arkansas Code Annotated § 11-9-702(4) states as follows:

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.

Based upon Rule 13 and Ark. Code Ann. § 11-9-702(4), I find that respondents' motion is with merit and is hereby granted. Claimant's claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge