

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306035

ELOISE LANGSTON, EMPLOYEE

CLAIMANT

AARP FOUNDATION SCSEP, EMPLOYER

RESPONDENT

ZURICH AMERICAN INSURANCE COMPANY,
CARRIER

RESPONDENT

OPINION FILED FEBRUARY 7, 2005

Hearing before The Honorable Dale Douthit, Administrative Law Judge, on January 6, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant, of Little Rock, Arkansas, failed to appear.

Respondents represented by Mr. Colin P. Wall, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the captioned claim on January 6, 2005, upon motion of respondents, to determine whether this claim should be dismissed for want of prosecution pursuant to A.C.A. §11-9-702 and Commission Rule 13.

On June 16, 2003, this Commission received claimant's AR-C indicating an incident at work and alleging injuries to her left knee, right ankle, right hand and right arm. By letter dated 6/30/03 respondents attorney, Michael R. Mayton, notified this Commission of his representation of respondents and stated that he was in the process of obtaining medical and, until that information was received, could not either admit or deny compensability. By letter dated 7/3/04 under the signature of Lynn Major, Legal Advisor, claimant was notified of this correspondence and was advised of her options with regard to requesting a hearing on her claim. There has been

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no response from claimant to that letter.

On November 4, 2004, respondents filed its Motion to Dismiss this claim. According to the Certificate of Service on said motion, a copy of the Motion to Dismiss was served upon claimant by regular mail, postage prepaid by respondents on 11/3/04.

December 2, 2004, this Administrative Law Judge caused a Notice to be sent to the parties setting a hearing date on Respondents' Motion to Dismiss for 1/6/05. Said correspondence was sent to claimant by Certified Mail, Return Receipt Requested. Said notice indicated failure to appear would result in dismissal of the claim. During the regular course of business the United States Postal Service delivered said correspondence to claimant and she accepted the delivery on 12/13/04 as evidenced by the US Postal Service Certified Mail Return Receipt. After the claimant received the certified letter she filed no response to the Motion to Dismiss, nor any reply to this ALJ. Subsequently, she failed and/or refused to appear at the 1/6/05 hearing on Respondents' Motion to Dismiss.

December 17, 2004, Ms. Dorothy Jackson, Clerk of the Ark. Workers' Compensation Commission received a letter from claimant indicating she wished to be excused from the hearing because she had started a new job and did not want to take off from it. December 28, 2004 Ms. Jackson sent a letter to claimant confirming a telephone conversation between the two wherein claimant advised she did not wish to pursue her claim.

That pursuant to the recent decision of the Arkansas Court of Appeals in Dillard vs. Benton County Sherrif's Office, ___ Ark. App. ___, ___ S. W. 3d ___ (Sept. 22, 2004, CA 04-025), this matter came on for a hearing to determine respondents' Motion to Dismiss. The claimant failed to appear after receiving notice by certified mail.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant has failed to prosecute her claim.
3. Respondents have neither admitted or denied compensability in this claim.

DISCUSSION

Documentary evidence was introduced reflecting that claimant has failed and/or refused to prosecute her claim. Claimant has been advised that her failure to respond to written notices, as well as to appear at a scheduled hearing, would result in a dismissal of her claim. A hearing was scheduled pursuant to A. C. A. §11-9-702(1)(4). Claimant failed to appear at said hearing after having been served proper notice by certified mail. All matters and things considered, this claim is hereby dismissed without prejudice.

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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