

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407049

DAVID G. MARTIN, EMPLOYEE	CLAIMANT
L A DARLING COMPANY, EMPLOYER	RESPONDENT
MANAGEMENT CLAIM SOLUTIONS, INC., INSURANCE CARRIER/TPA	RESPONDENT

ORDER OF DISMISSAL AND OPINION FILED SEPTEMBER 27, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on September 23, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant failed to appear.

Respondents represented by Mr. Gail O. Matthews, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled on September 23, 2005, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

This claim concerns an alleged injury occurring on or about August 23, 2002. Respondents have controverted the claim in its entirety, maintaining that the alleged injury did not arise out of and in the course of claimant's employment.

A procedural history of this claim is warranted. As previously noted, the claim concerns an August, 2002, alleged injury. A Commission Form AR-C, filing a claim for initial benefits, was filed on or about July 19, 2004, just before the expiration of the statute of limitations. The claim was filed by claimant's former attorney of record, Mr. Timothy Carr. At the scheduled hearing, respondents' attorney pointed

out that originally an EEOC claim was filed, and, following the dismissal of the EEOC claim, a workers' compensation claim was filed. Claimant's attorney subsequently filed a motion to withdraw as counsel, and an Order was filed December 8, 2004, relieving him as attorney of record. Thereafter, the claimant elected to pursue his claim *pro se*. A prehearing conference was conducted on March 16, 2005. During the prehearing conference, claimant requested an opportunity to consult with another attorney to determine whether to proceed. A Prehearing Order was filed on March 16, 2005, granting the claimant an additional sixty (60) days to determine whether he wished to proceed. Following the expiration of sixty (60) days, respondents filed a Motion to Dismiss for failure to prosecute. In response, claimant objected, pointing out that his initial efforts to secure an attorney had failed and that he was diligently seeking another attorney. Accordingly, an Order was filed June 8, 2005, denying respondents' Motion. No further communication was received from the claimant. By letter dated August 8, 2005, respondents renewed its Motion that the claim be dismissed for failure to prosecute, a copy of which was sent to the claimant. By letter dated August 12, 2005, this Commission advised the claimant that a Motion to Dismiss had been filed in his claim and advised that failure to respond within twenty (20) days could result in the dismissal of his claim. Said notice was sent both Certified Mail, Return Receipt Requested, as well as First-Class Mail and was delivered to the claimant on August 16, 2005, as reflected by return receipt of the notice. Thereafter, a second notice

was sent September 7, 2005, scheduling a hearing on the Motion. Again, the notice of the hearing was sent both Certified Mail, Return Receipt Requested, and First-Class Mail. The notice was delivered to the claimant as reflected by return receipt. The subject of the hearing was the Motion to Dismiss the claim. The claimant failed to appear at the scheduled hearing. Respondents moved for dismissal of the claim with prejudice. In view of the foregoing, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant filed a claim for benefits alleging an August 23, 2002, injury.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 13.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to prior notices, as well as appear at the scheduled hearing would result in the dismissal of his claim. A hearing was scheduled at respondents' request pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___

(CA04-025, Opinion delivered September 22, 2004.)

After full consideration of the facts, issues, and the law, and with notice of the hearing having been sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed with prejudice.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge