

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410577

JAMISON MENDOZA	CLAIMANT
JOHN DAVID LINDSEY	RESPONDENT
F.S. RICHARD & ASSOCIATES INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 12, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss on June 21, 2005, in Springdale, Arkansas.

The respondents filed a Motion to Dismiss for Failure to Prosecute on May 25, 2005. The respondents alleged that more than six months have past since the claimant filed a Form AR-C and that the claimant has not sought any type of bonafide hearing before the Commission over the past six months. The respondents, therefore, request dismissal under Rule 13 of the workers' Compensation Commission for failure to prosecute.

The claimant, by letter dated June 2, 2005, set forth that a pre-hearing conference was held in January 2005, and that a deposition of the claimant was taken in February. The claimant contends that a consensus was reached and that the hearing scheduled for April 19, 2005, was removed from the hearing docket.

The claimant objected to the dismissal since this is a very active case and benefits continue to be paid.

The documentary evidence submitted in this matter consists of the Claimant's letter dated June 2, 2005, marked Claimant's Exhibit No. 1. The respondents submitted their Motion to Dismiss marked Respondents' Exhibit No. 1 and the Form AR-C with attachments marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The respondents, in their presentation, agreed that the claimant has ongoing treatment for his compensable injury which the respondents continue to be responsible and pay for and further that if the claimant requests a change of physician, the respondents would not object to a change of physician because Arkansas law entitles him to such a change, however, the respondents would ask that the physician be chosen by the Commission.

The claimant set forth that his claim is a meds only at this time and that a change of physician had been requested a month or two earlier but that request had been withdrawn. The claimant set forth that they again are seeking a change of physician.

The documentary evidence sets forth that the claimant filed an AR-C on November 15, 2004, requesting benefits including additional benefits. According to the Commission's file, the claimant filed a pre-hearing information sheet on November 17, 2004, requesting temporary total disability and medical treatment. A pre-hearing order was entered on January 13, 2005, where it was stipulated by

the parties that the claimant had sustained a compensable injury to his left elbow and back on September 1, 2004, further agreeing that medical expenses had been paid to October 18, 2004, and that temporary total disability had been paid to the claimant to November 5, 2004. The issues agreed to be tried at that time were the claimant's entitlement to additional medical treatment subsequent to October 18, 2004, and additional temporary total disability from November 6, 2004, to a date to be determined as well as attorney's fees. A hearing was scheduled for April 19, 2005, on these issues. By letter dated March 31, 2005, the claimant's attorney withdrew her request for a hearing setting forth that they were asking for a change of physician for the claimant. This same letter sets forth that the respondents are paying the claimant's medical treatment for his compensable back and elbow injury, therefore, a hearing was not necessary.

Ark. Code Ann. §11-9-702(d) sets forth that:

If within six months after the filing of a claim for additional compensation, no bonafide request for a hearing has been made with respect to a claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of a claim within the limitation period specified in subsection (b) of this section.

Ark. Code Ann. §11-9-702(b) time for filing additional compensation period (1) sets forth in cases where any compensation, including disability or medical has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one year from the date of the last payment of compensation or two years from the date of the injury whichever is greater.

Based on the evidence presented in this case as well as Arkansas law and the statements made by the parties, I find that the respondents' Motion to Dismiss should be denied at this time. It is clear that this is an active ongoing claim which the respondents have accepted and are paying. The hearing scheduled for April 19, 2005, was set to resolve issues concerning the claimant's right to additional benefits. The parties resolved these issues by agreement and the respondents have stated that they continue to pay benefits for this claimant. Although there are no issues to be tried at the present time, six months has not lapsed since the claimant had a hearing scheduled to resolve disputed matters.

Therefore, pursuant to Ark. Code Ann. §11-9-702(d), this Motion to Dismiss is hereby denied. See Hudson v. Cross County, Full Commission opinion F104516 (July 22, 2005).

The respondents requested costs and fees in the above styled matter. The respondents' request for costs and fees is hereby denied.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE