

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F303355**

<b>WENDELL MILLS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ST. JOSEPH CATHOLIC JR. HIGH SCHOOL, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ST. PAUL GUARDIAN INSURANCE CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 22, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on August 19, 2005, at Pine Bluff, Jefferson County, Arkansas.

Claimant did not appear.

Respondents represented by the HONORABLE JOSEPH E. KILPATRICK, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute.

After review of the Commission's file I find the respondents' Motion should be granted.

**STATEMENT OF THE CASE**

The claimant was previously represented by Attorney Michael Boyd for a October 11, 2001 back injury. In his February 10, 2004 deposition, Dr. James Adametz opined that additional medical treatment was unnecessary and assessed a 0% impairment rating. The claimant then underwent surgery by Dr. Richard Jordan and was assessed a 12% rating on March 26, 2004 which the respondents controverted.

Several prehearing conferences were conducted to prepare for a hearing (see the Commission's orders dated September 30, 2003, July 2, 2004, July 7, 2005). After the claimant failed to appear for his deposition, Attorney Boyd asked to be relieved as counsel (see his letter of

July 18, 2005 and the Commission's order of July 22, 2005).

Correspondence was sent to the claimant by certified mail regarding the dismissal (see letters of July 22, 2005 and July 29, 2005). To date there has been no reply.

### **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue his case but he has failed to respond to written notices and failed to appear at the scheduled hearing. The claimant has not requested a hearing within the last six months.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):

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 refileing of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 13:

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)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge