

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F409541

**KENNETH J. MONEAGLE, JR.,
EMPLOYEE**

CLAIMANT

**FIRST ELECTRIC COOP CORP.,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARK. RURAL ELECTRIC
SELF-INSURED TRUST;
CROCKETT ADJUSTMENT,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED JUNE 10, 2005,

Pursuant to a hearing conducted April 13, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas, appearing for the respondents; and

Mr. Kenneth Moneagle, the claimant, proceeding pro se.

STATEMENT OF THE CASE

This is a hearing to consider the motion filed on behalf of the respondents requesting that the claim be dismissed for failure to prosecute.

The record reveals that the employer filed a Form AR-1, received by the Commission September 13, 2004, and that the claimant had reported an injury to his back allegedly occurring August 25, 2004. An AR-2 dated September 15, 2004, was received by the Commission on that date indicating that the claim was controverted because the circumstances of the reported accident/injury and delay in reporting do not substantiate a compensable injury. A letter dated September 17, 2004, from a legal advisor advised the claimant that the respondents were denying his claim and mentioned the services available through the legal advisor division. The respondents declined to participate in a legal advisor conference and the file was forwarded to the adjudication division for a hearing.

A telephone prehearing conference was conducted November 29, wherein the claimant alleged that he suffered a back injury on August 25, 2004, and should receive benefits, including medical benefits and temporary total disability benefits from August 30 through September 15, 2004.

The respondents contended that a compensable injury cannot be established by medical evidence, supported by objective findings, and, further, that the claim is controverted because the circumstances of the reported accident and the delay in reporting do not substantiate a compensable injury, according to the Form AR-2.

The parties agreed to review the results of an MRI scan in order to resolve or to clarify issues currently in dispute and the claimant was advised of his right to proceed without an attorney and, also, that he had the right to have an attorney represent him.

Following the telephone prehearing conference, there has been no additional activity on the claim. The respondents filed a motion requesting a dismissal, noting the circumstances of the claim and, further, stating that the claimant has not responded to interrogatories propounded to him on October 28, 2004.

At the hearing, the claimant indicated that he was not represented by an attorney and, then, was cautioned that, while he has the right to proceed without an attorney, he is better advised to be represented by an attorney who is familiar with workers' compensation law. The claimant also indicated that he was familiar with the two year statute of limitations which requires his claim be filed within two years of the date of injury. The claimant was also advised to show prospective attorneys the medical record, including the report of an MRI scan. After further discussion, the claimant agreed to a dismissal.

Accordingly, at this time, the motion will be granted and the claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge