

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403903

MIKE PERRY, EMPLOYEE	CLAIMANT
TRI-CO CONSTRUCTION, INC., EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 8, 2005

Hearing conducted before the HONORABLE DALE DOUTHIT, Administrative Law Judge in Little Rock, Pulaski County, Arkansas.

The claimant of Little Rock, Arkansas, did not appear at the hearing.

The respondents were represented by HON. BETTY DEMORY, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on March 31, 2005. A prehearing conference was conducted on September 1, 2004. A prehearing order was filed on September 10, 2004, and a copy of the prehearing order has been marked as Commission Exhibit No. 2 and made a part of the record.

STATEMENT OF THE CASE

The purpose of the March 31, 2005 hearing was to consider the motion to dismiss filed on behalf of the respondents.

The respondents contend this claim should be dismissed for lack of prosecution pursuant to A.C.A. §11-9-702(d), and Arkansas Workers' Compensation Commission Rule 13. Respondents' motion to dismiss was filed on February 4, 2005 with the Commission; said motion contained a certificate of service to the claimant evidencing it was mailed to his last known address on file with the Commission. The claimant never filed a response to the Respondents' motion to dismiss.

On February 7, 2005, this Administrative Law Judge sent a copy of the respondents' motion to dismiss, by regular mail, to the claimant along with a letter advising him to respond. (Comm. Ex. 3). Said correspondence was not returned by the U.S. Postal Service. The claimant never responded to this Administrative Law Judge, or to the pending motion. More than six months elapsed without the claimant taking action in this case. Written notice was provided to the claimant setting respondents' motion to dismiss for a hearing on March 31, 2004 at 10:30 a.m. Notice of said hearing was sent to the claimant by certified mail, return receipt requested, and by regular first class mail. The regular mail was never returned; however, the certified letter was

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never claimed by the claimant and was returned to the Commission.

A review of the file shows no action has been taken by the claimant to prosecute his claim since September 1, 2004. Accordingly, due to the claimant's failure to respond to the motion to dismiss and failure to appear at the hearing, as well as a review of the file, the respondents' motion to dismiss is hereby granted, without prejudice.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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