

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503761

CORNELL PETTY, EMPLOYEE	CLAIMANT
STAFFMARK, EMPLOYER	RESPONDENT
AIG CLAIM SERVICE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 10, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on October 7, 2005, at Osceola, Mississippi County, Arkansas.

Claimant failing to appear.

Respondents represented by Ms. Carol Lockard Worley, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled for October 7, 2005, to determine various issues set out further below.

A prehearing conference was conducted in this claim on August 24, 2005, and a Prehearing Order was filed on said date. During the prehearing conference, the claimant was, once again, advised of his right to legal representation; that an attorney could not charge him a fee in a workers' compensation claim without approval of this Commission; that fees, if approved, are only awarded if an attorney was successful in securing him benefits, at which time he would be responsible for one-half (1/2) of the fee and respondents would be responsible for one-half (1/2) of the fee. In addition, the claimant was advised that he had the burden of proving his entitlement to benefits, and that, if unsuccessful, he could not subsequently request

another hearing, maintaining that the reason for his failure was due to lack of legal representation. The claimant elected to proceed in his own behalf.

A prehearing conference it was stipulated that the employment relationship existed between the parties at all relevant times, including March 29 and March 30, 2005; that respondents controverted compensability of an alleged chemical burn on March 29, 2005, while acknowledging that the claimant sustained a compensable injury on March 30, 2005, in the form of a head injury and cervical spine strain which was accepted as compensable and for which various benefits were paid while controverting entitlement to indemnity benefits. During the prehearing conference, the parties agreed to present the following issues for determination:

1. Compensability of the March 29, 2005, alleged chemical burn injury.
2. Claimant's entitlement to additional benefits related to the March 30, 2005, admitted injury.

At the prehearing conference, the claimant contended, in summary, that he sustained two (2) separate and distinct injuries, the first, a chemical burn to his leg on March 29, 2005, as well as the admitted March 30, 2005, injury; that he was entitled to temporary total disability benefits from March 31, 2005, and continuing through June 27, 2005, at which time he returned to work. Respondents maintained that the claimant did not suffer a compensable chemical burn injury, maintaining that they were not liable for benefits associated with said claim. Respondents further contended that it accepted and paid all appropriate benefits associated with the admitted injuries.

By agreement of both parties, this matter was scheduled for a formal hearing on October 7, 2005, at 1:00 p.m. in the District Courtroom, Justice Building, Osceola, Arkansas. The claimant was advised of the hearing date at the prehearing conference and was also sent a copy of the Prehearing Order, certified mail, return receipt requested, which was apparently received by the claimant as confirmed by return receipt #7115 5950 0330 0053 6683 received on August 26, 2005. A copy of the Prehearing Order was introduced at the hearing.

Because of claimant's failure to appear, respondents moved for a dismissal of the claim with prejudice. Alternatively, respondents requested a dismissal without prejudice; however, requested that if the dismissal was without prejudice, and the claimant subsequently re-filed within the statutory periods allowed under Arkansas Law, that it be awarded all costs and fees for failure to appear at the October 7, 2005, hearing. Respondents' attorney pointed out that she had traveled to Osceola, Arkansas, and was prepared to defend the claim, having four (4) witnesses available to testify, including three (3) company witnesses and one witness under subpoena.

After full consideration of the facts, issues, and the law, and with notice of this hearing having been received by the claimant, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. A prehearing conference was conducted in this claim on August 24, 2005, and a Prehearing Order filed on said date, at which time the claim was scheduled for a formal hearing for October 7, 2005.
3. The claimant failed to appear and prosecute his claim.
4. This claim should be dismissed pursuant to Commission Rule 13 for want of prosecution.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the record reflects that the claimant failed to appear at the scheduled, October 7, 2005, hearing. The claimant had actual notice of the scheduled hearing. Pursuant to Commission Rule 13, this claim should be dismissed with prejudice. Unless a timely appeal is filed to reopen the claim within thirty (30) days, the Order of Dismissal will become final. In the event claimant files a timely appeal, and requests another hearing, claimant will be responsible for costs and fees associated with the within hearing, unless compelling circumstances exist which would excuse the claimant's failure to appear. No costs have been requested and none will be assessed for the claimant's failure to appear at the October 7, 2005, hearing.

ORDER

After full consideration of the facts, issues, and the law, and, with notice of the hearing provided to the claimant, having failed to appear, it is hereby determined that pursuant to Commission Rule 13, this claim should be, and it is, hereby

dismissed with prejudice for want of prosecution.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge