

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F308903

**EDUARDO ROSADO,
EMPLOYEE**

CLAIMANT

**LUBY'S CAFETERIAS, INC.,
EMPLOYER**

RESPONDENT

**LUMBERMENS MUTUAL CAS. CO.;
GALLAGHER BASSETT SERVICES,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 20, 2005.

Pursuant to a hearing conducted June 30, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. David Jones, Attorney at Law, Little Rock, Arkansas, appearing for the respondents and

The claimant, proceeding pro se, failing to appear.

STATEMENT OF THE CASE

This is a hearing to consider the motion to dismiss, filed on behalf of the respondents, for failure to prosecute the claim.

A review of the record shows that on or about September 2, 2003, a Form AR-C was filed on behalf of the claimant by his former counsel alleging a back injury on or about July 1, 2003, as the result of a lifting incident and requesting temporary total disability benefits and medical expenses. On September 15, 2003, the Third Party Administrator filed a Form AR-2 and a cover letter indicating that the respondents controverted the claim, pending additional investigation.

Thereafter, in a letter dated March 29, 2004, the respondents asked that the claim be dismissed for want of prosecution. On April 26, 2004, claimant's counsel indicated that he was trying to contact his client concerning the Motion to Dismiss but objected to it and would request

a hearing prior to consideration of the motion. Accordingly, on June 8, 2004, a prehearing conference was conducted and on June 8, 2004, an Order was entered denying the Motion to Dismiss.

Thereafter, on July 27, 2004, a Motion to Dismiss was filed on behalf of the respondents, based on the claimant's failure to appear for his deposition and his failure to respond to discovery. On September 3, 2004, an Order of Dismissal was entered, without a hearing on the motion.

On November 12, 2004, claimant's counsel filed a motion to withdraw as attorney of record which was granted by the Commission in its order of December 7, 2004.

The claimant failed to respond to the Motion to Dismiss and failed to appear at the Hearing on June 30, 2005, to consider the Motion to Dismiss. The record generally indicates that the claimant has not been cooperative with his own counsel or with the Commission and has made virtually no attempt to contact respondents or the Commission after the initial claim form had been filed. No hearing has been requested in over six months.

Accordingly, premises considered, based upon a review of the entire record, including the pleadings and statements of counsel, as well as other matters before the Commission, due to the claimant's abandonment of his claim and failure to prosecute his claim, the motion should be, and it is hereby, granted and this claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge