

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. E806095**

**STEVE SHERMAN, EMPLOYEE** **CLAIMANT**

**LENNOX INTERNATIONAL INC.,  
EMPLOYER** **RESPONDENT**

**PACIFIC EMPLOYERS INSURANCE CO.,  
C/O ESIS, CARRIER** **RESPONDENT**

**OPINION FILED DECEMBER 5, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on September 29, 2005, Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Mr. Kristopher B. Knox, Attorney at Law, Little Rock, Arkansas.

A hearing was held on September 29, 2005, to determine whether the above-referenced claim should be dismissed for claimant's non-compliance with discovery and for want of prosecution pursuant to Rule 13 of the Rule of the Arkansas Workers' Compensation Commission.

The hearing was scheduled on respondents' Motion to Dismiss filed July 22, 2005, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant. Claimant filed no written response but appeared for the hearing to contest the Motion to Dismiss.

After review of the documentary exhibits filed by respondents and testimony of the claimant at the hearing, I find that respondents' motion should, at this time, be denied.

### **STATEMENT OF THE CASE**

The claimant filed with the Commission on January 14, 2005, a request for a hearing to determine his entitlement to additional medical treatment and any other benefits to which he might be entitled as a result of an alleged accident of April 29, 1998. The case was then assigned to this Administrative Law Judge.

Respondents assert that they propounded interrogatories to the claimant on February 28, 2005, and have yet to receive answers to same. The Commission's file reflects that prehearing notices with prehearing questionnaires were mailed to the parties on April 20, 2005; and, as of May 24, 2005, no responses had been received on behalf of claimant by the Commission. As such, the file was returned to general files. No further activity has occurred on behalf of claimant since his request for a hearing, initially.

On July 22, 2005, respondents filed a motion to dismiss for want of prosecution. Claimant failed to respond to the motion but did appear for the hearing on the motion. A hearing was held on the motion on September 29, 2005.

Claimant admitted that he had received the interrogatories propounded to him by respondents but asserted that he did not respond to them because he "thought it

would all come out when we came to court.” He testified that he “thought they had all that” and that he did not know why they “want to go over all that again.”

Claimant admitted that he had received a prehearing questionnaire from the Commission but stated that he did not “understand a lot of that stuff.” He testified that he knows now that he has to answer the questions from the Commission and from respondents.

### **FINDINGS OF FACT**

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim;
2. On January 13, 2005, claimant filed a request for a hearing;
3. Although given ample time to do so, claimant failed to comply with discovery attempts made by respondents, pursuant to Rule 16 of the Commission;
4. On July 22, 2005, respondents filed a Motion to Dismiss;
5. Claimant failed to file a written response to respondents’ motion to dismiss;
6. The claimant did appear at the scheduled hearing on the motion on September 29, 2005, to request that his case not be dismissed;

7. The claimant agreed to answer interrogatories propounded by respondents, as well as the prehearing questionnaire submitted by the Commission;
8. Respondents' motion to dismiss is denied at this time.

### **DISCUSSION**

A review of the evidence shows the claimant failed to comply with discovery, initially, but did appear at the scheduled hearing and indicates a willingness to pursue his claim and cooperate with discovery.

Rule 13 of the Rules of the Arkansas Workers' Compensation Commission states, in part, as follows:

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.)

[Emphasis added.]

Because of claimant's appearance at the hearing on the motion to dismiss and his indication that he wishes to pursue his claim, he simply did not understand the process, and he will now cooperate with discovery, respondents' motion to dismiss this case for failure to prosecute pursuant to Rule 13, is denied at this time.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge