

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311205

CLIFTON L. SHIFFLETT, EMPLOYEE	CLAIMANT
SCHNEIDER NATIONAL CARRIERS., INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL FIRE INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED FEBRUARY 8, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on February 7, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondents represented by Mr. Colin P. Wall, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 7, 2005, to determine whether this claim should be dismissed for lack of prosecution pursuant to Ark. Code Ann. §11-9-702(d) and Commission Rule 13.

This claim has an unusual procedural history. Although it does not appear that the claimant ever filed a formal claim, specifically a Commission Form AR-C, the Commission file reflects that the employer accepted a right ankle injury occurring on or about October 7, 2003, which was treated as a medical only claim as reflected by the filing of a Commission Form AR-2 signed by claims adjuster, Marie Hill, on October 28, 2003. Respondents paid various hospital and medical expenses in the amount of \$2,153.55 as reflected by a Commission Form AR-4 filed on March 1, 2004. Thereafter, by letter dated March 29, 2004, the claimant

requested additional medical treatment, specifically, the right to see a specialist with Orthopedic Associates in Fisherville, Virginia. The claimant also requested a hearing on his claim by letter/fax dated April 8, 2004. (Resp. Ex. A, pp.1-2)

Respondents resisted claimant's entitlement to additional benefits, taking the position that the claimant was released to return to full-duty without restrictions. Pursuant to the claimant's request for a hearing, a letter was sent by this administrative law judge, advising the claimant of his right to legal representation, as well as providing him information concerning attorney's fees, and providing him with a toll-free number to confer with a Commission legal advisor at no cost. Subsequently, a Prehearing Questionnaire was sent to the claimant, *pro se*, which he failed to answer. Accordingly, by letter dated July 23, 2004, the claim was returned to the Commission's general files. (Resp. Ex. A, pp.9-10)

On December 22, 2004, respondents, by and through its attorney, filed a Motion to Dismiss, together with a brief in support of its Motion to Dismiss. Respondents requested that this claim be assigned to an administrative law judge for a hearing on its Motion.

By letter dated January 3, 2005, the claimant was advised that a Motion to Dismiss had been filed for failure to diligently prosecute or pursue his claim. The claimant was further advised that failure to respond to the Motion or request a hearing would result in the dismissal of his claim. Again, the claimant failed and/or refused to respond. Accordingly, a Notice of Hearing was sent January 25, 2005,

scheduling the matter for a hearing. The subject of the hearing was the Motion to Dismiss the claim. (Resp. Ex. A, pp.20-21)

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On or about March 29, 2004, the claimant filed a claim for additional benefits, as well a request an immediate hearing.
3. The claimant failed to prosecute his claim and respond to prehearing questionnaires sent to the parties.
4. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(d).

DISCUSSION

Respondents filed a Motion to Dismiss this claim for failure to prosecute. Numerous notices were sent to the claimant, advising him that his failure to respond would result in the dismissal of the claim. At respondents' request, pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___ (C.A.04-025, Opinion delivered September 22, 2004), a hearing was scheduled on February 7, 2005.

Rather than conduct a further analysis of the record in this cause, suffice it to say that documentary evidence introduced reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his

failure to respond to written notices, as well as appear at a scheduled hearing would result in the dismissal of his claim. A hearing was scheduled at respondents' request. The claimant failed to appear. In view of the foregoing, this claim is hereby dismissed without prejudice.

This order shall not be construed to affect the refiling of this claim if filed within the statutory limits imposed by Arkansas Law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge