

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F500172**

**KELLI SIMUEL,  
EMPLOYEE**

**CLAIMANT**

**WAL MART ASSOCIATES, INC.,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**CLAIMS MANAGEMENT, INC.,  
BENEFITS ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED AUGUST 5 2005,**

Pursuant to a hearing conducted May 11, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Ms. Amy S. Huffman and Mr. Jonathan Streit, Attorneys 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.

The respondents requested that this claim be dismissed for non-compliance with discovery and want of prosecution pursuant to Rules 16 and 13 of the Commission Rules.

Although written notice of the hearing was duly forwarded to the claimant at the claimant's last known address, by certified and regular mail, the claimant failed to appear at the hearing and failed to respond to the Motion to Dismiss.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. The employment relationship existed at all pertinent times, including December 14, 2004, when the claimant's average weekly wage was \$256.00.
3. The preponderance of the evidence shows that the claim should be dismissed for want of prosecution pursuant to Rule 13 and for non-compliance with discovery pursuant to Rule 16.

## **DISCUSSION**

On January 19, 2005, a written request for a hearing and a Form C were received by the Commission from the claimant alleging an injury to the lower back as a result of lifting at work and requesting rehabilitation and medical expenses. After an initial medical examination, at the expense of the respondents, the respondents controverted the claim in its entirety, contending that a compensable injury cannot be established by medical evidence, supported by objective findings.

Thereafter, the respondents propounded interrogatories and requests for production on or about February 4, 2005, to be answered within 30 days. The claimant did not respond to the discovery requests.

In correspondence dated February 11, 2005, notice of a prehearing conference was given the parties and the parties were directed to respond to a prehearing questionnaire. The prehearing conference was attempted on March 8, 2005, but the claimant was unavailable by telephone and had failed to respond to the prehearing questionnaire. The file was then returned to general files.

On March 9, 2005, the respondents sent a notice of deposition to the claimant, scheduling the claimant's deposition for March 23, 2005, at the office of counsel for the respondents. Although a return receipt was signed on behalf of the claimant, the claimant failed to appear at the deposition.

After the Motion to Dismiss was received by the Commission April 5, 2005, a hearing was scheduled for May 11, 2005, and notice of the hearing was sent by certified and regular mail to the claimant at the claimant's last known address. The claimant failed to appear at the hearing and, after a review of the matter at the hearing, the Motion to Dismiss was granted.

Accordingly, the Motion to Dismiss should be, and it is hereby, granted and the claim is hereby dismissed without prejudice.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge