

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313057

GREGORY J. SMITH, EMPLOYEE	CLAIMANT
CERTAINED ROOFING, EMPLOYER	RESPONDENT
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, INSURANCE CARRIER; ESIS, TPA	RESPONDENT

OPINION AND ORDER FILED MARCH 22, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on March 21, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear either in person or by his attorney.

Respondents represented by Ms. E. Diane Graham, Attorney-at-Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 21, 2005, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

This claim comes on for consideration of respondents' Motion to Dismiss dated January 28, 2005, and filed with the Commission on January 31, 2005. Because the claimant failed to respond to the Motion, notice was sent March 1, 2005, scheduling the matter for a hearing on the Motion for March 21, 2005, at 10:30 a.m., Commission Hearing Room A, Little Rock, Arkansas. Due to a scheduling conflict, at the request of claimant's attorney, the hearing was rescheduled, by agreement of both parties, for 1:00 p.m. on the same date and

location.

Pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, __ Ark. App. ____, __ S.W.3d __ (September 22, 2004, C.A.04-025), and, at respondents' request, a hearing was scheduled as required by A.C.A. §11-9-702(a)(4). Said notice was sent Certified Mail–Return Receipt Requested to claimant's attorney, as well as to the claimant. The claimant failed and/or refused to appear.

At the hearing, respondents, by and through its attorney, submitted a list of proposed stipulations which, because of claimant's failure to appear, are hereby accepted as facts:

- 1) Claimant, Gregory Smith, was hired by the respondent/employer, Certaineed Roofing, on June 12, 2003.
- 2) Claimant filed an AR-C dated December 4, 2003, alleging an injury to his hand, shoulder, and arm on September 11, 2003.
- 3) Claimant signed an AR-N on December 18, 2003, alleging injury to his hand, shoulder, and arm occurring on September 15, 2003.
- 4) ESIS filed an AR-2, amended, denying compensability and stating claimant was not employed by the insured at the time of the alleged injury.
- 5) Claimant's employment with Certaineed was terminated on September 1, 2003.
- 6) By letter dated January 13, 2004, attorney Philip M. Wilson, filed a Form N signed by the claimant on January 12, 2004, alleging an injury to his hand, arm, and shoulder on August 19, 2003, and an AR-C alleging an injury in August, 2003. The letter requested the case not be assigned to an Administrative Law Judge.
- 7) Respondents have paid no benefits.

8) Respondents answered Interrogatories and Request for Production of Documents on February 23, 2004. No further activity has occurred until respondents filed a Motion to Dismiss on January 28, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations proposed by the respondents are hereby accepted as fact.
3. The claimant has failed to prosecute his claim.
4. Respondents have controverted this claim in its entirety.

DISCUSSION

_____ Documentary evidence was introduced reflecting 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 to appear at the scheduled hearing, would result in a dismissal of his claim. A hearing was scheduled pursuant to Ark. Code Ann. §11-9-702(a)(4). The claimant failed to appear. Accordingly, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice.

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

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge