

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411549

I'DELLA M. WAITS, EMPLOYEE	CLAIMANT
BAPTIST HEALTH, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED NOVEMBER 21, 2005

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

Claimant failed to appear.

Respondent represented by Ms. Wendy Scholtens Wood, Barber Law Firm, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled for November 21, 2005, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702.

This claim concerns an alleged accident and injury occurring on or about July 4, 2004. Respondents have controverted the claim in its entirety, maintaining that the claimant's alleged injury was not compensable within the meaning of the Arkansas Workers' Compensation Laws.

A procedural history of this claim is warranted. Although the claimant has never filed a Commission Form AR-C, a Commission Form AR-N was signed by the claimant on November 9, 2004, and faxed to the Commission. Thereafter, respondents filed a Commission Form AR-2, controverting the claim. The claimant subsequently secured the services of an attorney, Mr. Neil Chamberlin, who entered

an appearance by letter dated January 5, 2005. Mr. Chamberlin eventually filed a Motion to Withdraw as attorney of record, and an Order was filed October 4, 2005, granting the Motion to Withdraw as counsel. Thereafter, respondents, by and through its attorney, filed a Motion to Dismiss pursuant to Ark. Code Ann. §11-9-702(a)(4). A copy of the Motion was served on the claimant. The claim was then assigned to the Adjudication Division to consider the Motion. A letter was sent to the claimant on October 14, 2005, giving her twenty (20) days to respond to respondents' Motion. The letter was sent Certified Mail and was received by the claimant on October 19, 2005, as reflected by return receipt of the notice. The claimant failed and/or refused to respond to the correspondence. Next, a notice of hearing was sent November 7, 2005, scheduling the matter for a formal hearing on November 21, 2005. Again, the notice of the hearing was sent Certified Mail and was received by the claimant on November 12, 2005, as reflected by the return receipt. The subject of the hearing was respondents' Motion to Dismiss. The claimant failed to appear at the scheduled hearing. Respondents renewed its Motion to Dismiss and introduced a Statement of Facts and documentary evidence in support of its Motion.

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. The claimant alleged an injury on July 4, 2004.
3. Respondents have controverted this claim in its entirety.

4. The claimant has failed to prosecute her claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4).

DISCUSSION

_____ Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim and the documentary evidence introduced reflects that the claimant has failed and/or refused to prosecute her claim. The claimant has been advised that her failure to respond to prior notices, as well as to appear at the scheduled hearing, would result in the dismissal of her claim. A hearing was scheduled 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).

After full consideration of the facts, issues, and the law, with notice of the hearing having been sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702(a)(4).

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