

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403041

NANCY WILKERSON, EMPLOYEE	CLAIMANT
THE FAMILY CENTER, EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED AUGUST 16, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on August 12, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant did not appear.

Respondents represented by the HONORABLE COLIN P. WALL, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute.

After review of the Commission's file and after listening to statements of counsel, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C with the Commission for a December 31, 2003 back, neck and shin injury. Notice was sent to Zurich on April 15, 2004 and the claim was denied.

The respondent-employer, The Family Clinic, had been sold to St. Vincent's with workers' compensation coverage provided by Preferred Provider Insurance Corp. effective on the date of injury. However, no workers' compensation file could be found on the Commission's computer system for an injury with St. Vincent.

The respondents filed a Motion to Dismiss with a certificate of service to the claimant. A second notice was sent by the Commission on June 21, 2005. To date there has been no reply.

There has been no activity in the Commission's file since the AR-C was entered. Notices have been sent to the claimant's last known address by certified mail regarding the Motion and the hearing, but to date, there has been no reply.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her case but she has failed to respond to written notices and failed to appear at the scheduled hearing. The claimant has not requested a hearing within the last six months.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 13:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge