

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309357

JAMES H. WILLIAMS

CLAIMANT

POST, BUCKLEY, SCHUH & JERNIGAN

RESPONDENT EMPLOYER

AMERICAN CASUALTY CO. OF READING PA

RESPONDENT CARRIER

ORDER AND OPINION FILED NOVEMBER 22, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant did not appear.

Respondents represented by the HONORABLE GARY MARTS, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear.

The hearing was scheduled on respondents' motion to dismiss for lack of prosecution filed on January 10, 2005, and again on September 16, 2005, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant and his attorney and they failed to appear at the hearing. The claimant's return receipt reveals delivery on October 24, 2005.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claimant filed a request for benefits following an on-the-job cardiac event on May 15, 2003. Respondents entered an appearance and denied the request for benefits in October 2003. On February 3, 2004, an AR-C Form was filed with the Commission by the claimant. The claimant's deposition was taken in January 2004 and very little has happened since that time. Respondents have controverted the claim in its entirety. Claimant has made no further requests for benefits since his February 3, 2004, request.

The respondents filed a motion to dismiss and the hearing notice was mailed on October 21, 2005, in accordance with *Dillard v. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d — (9/22/04)(CA 04-025).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but 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 dismissal hearing pursuant to Rule 13.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**