

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F410218**

**NADINE A. WILLIAMS, EMPLOYEE** **CLAIMANT**

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

**CLAIMS MANAGEMENT INC. (TPA),  
CARRIER** **RESPONDENT**

**OPINION FILED JUNE 23, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on June 2, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondents represented by Mr. Jonathan Streit, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 2, 2005, to determine whether the above-referenced claim should be dismissed for claimant's non-compliance with discovery, for want of prosecution, and for claimant's failure to request a hearing within six months of filing her AR-C under Ark. Code Ann. § 11-8-702(a)(4).

The hearing was scheduled on respondents' Motion to Dismiss for Non-Compliance with Discovery and Want of Prosecution filed April 12, 2005, pursuant to Rules 16 and 13 of the Commission. A certificate of service was sent to the claimant. Claimant did not appear for the hearing.

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

### **STATEMENT OF THE CASE**

The claimant alleged that she sustained a gradual onset back injury on or about August 1, 2004. Respondents controverted the entire claim and have paid no benefits to the claimant. On October 4, 2004, claimant filed an AR-C request for benefits. Claimant filed another AR-C request on October 26, 2004, after retaining Mr. Philip M. Wilson as legal counsel.

Respondents propounded interrogatories and requests for production of documents on October 20, 2004, and then again on November 15, 2004, upon claimant's retaining Mr. Wilson as counsel. Claimant did not comply with discovery, despite three letters dated, respectively, December 17, 2004, January 28, 2005, and February 22, 2005, from respondents, requesting a response to their discovery requests.

On March 16, 2005, counsel for respondents scheduled the claimant's deposition for April 6, 2005, and provided written confirmation of the scheduled deposition to counsel for claimant. Claimant failed to appear for the April 6, 2005, deposition. Respondents then, on April 12, 2005, filed with the Commission the

motion at issue herein, a Motion to Dismiss for Non-Compliance with Discovery and Want of Prosecution.

Claimant was then sent correspondence to counsel for claimant on April 19, 2005, giving claimant fifteen days to object to the motion for dismissal and request a hearing. Claimant never objected to respondents' motion to dismiss. At respondents' request, a hearing was set for June 2, 2005, to consider respondents' motion, in accordance with *Dillard v. Benton County Sheriff's Office*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (9-22-04/CA 04-025). A copy of each of the requests, letters, motions, and correspondence mentioned herein was introduced, collectively, as respondents' Exhibit 1 at the hearing in this matter.

#### **FINDINGS OF FACT**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. On October 4, 2004, and again on October 26, 2004, claimant filed an AR-C request for benefits with the Commission;
3. Respondents controverted the claim;
4. Although given ample time to do so, claimant failed to comply with numerous discovery attempts made by respondents, pursuant to Rule 16 of the Commission;

5. On April 12, 2005, respondents filed a Motion to Dismiss for Non-Compliance with Discovery and Want of Prosecution, pursuant to Rules 16 and 13 of the Commission;
6. Claimant failed to object, request a hearing, or in any way respond to respondents' motion to dismiss;
7. The claimant failed to appear at the scheduled hearing on June 2, 2005;
8. The claimant has failed to prosecute her claim and, pursuant to Rule 13 of the Commission, respondents' motion to dismiss has merit.

### **DISCUSSION**

A review of the evidence shows the claimant has had ample opportunity to pursue her case but has chosen not to. Claimant has failed to comply with discovery and failed to appear at the scheduled hearing.

Rule 16 of the Rules of the Arkansas Workers' Compensation Commission states, in part, as follows:

Depositions may be taken and discovery had by any party after the claim has been controverted in accordance with the statutory provisions and rule of civil procedure relating to civil actions in the Chancery and Circuit Courts of this State, unless the parties agree otherwise.

Rule 13 of the Rules of the Arkansas Workers' Compensation Commission states, in part, as follows:

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.)

At the request of respondents, this case is dismissed for failure to prosecute pursuant to Rule 13.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge