

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400905

KENNETH WILSON, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 27, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on April 22, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant failing to appear.

Respondents represented by Mr. John D. Webster, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on April 22, 2005, to determine whether the claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

This claim has a lengthy and unusual procedural history. A prehearing conference was conducted in this claim on May 5, 2004, and a Prehearing Order was filed on said date. As reflected by the Prehearing Order, it was stipulated that the Commission had jurisdiction over this claim; that the employment relationship existed at all relevant times, including October 17, 2003; and that the claim has been controverted in its entirety. By agreement of the parties, the primary issue concerned compensability. At the conclusion of the prehearing conference, this claim was scheduled for a formal hearing on June 25, 2004, in Jonesboro,

Arkansas. Prior to the scheduled hearing, by letter/fax dated June 18, 2004, claimant's prior attorney of record requested that the hearing be postponed to allow additional time for discovery, specifically, in an attempt to locate a key witness. Accordingly, the hearing was rescheduled for July 23, 2004. Again, by letter/fax dated July 21, 2004, claimant's attorney requested a cancellation of the hearing scheduled for July 23, 2004, and requested that the claim be returned to the Commission's general files while agreeing to be responsible for the court reporter's appearance fee due to the untimely cancellation. Accordingly, the hearing was cancelled and the claim returned to the Commission's general files without objection from respondents.

On or about December 28, 2004, respondents filed a Motion to Dismiss for want of prosecution, together with a brief in support of its Motion. Thereafter, claimant's attorney of record, Mr. Garland L. Watlington, filed a Motion to Withdraw as claimant's counsel. Because the claim had been reassigned to this administrative law judge to consider respondents' Motion to Dismiss, additional time was given to claimant and/or claimant's attorney to respond to both Motions. An Order was filed February 22, 2005, allowing Mr. Watlington to withdraw as attorney of record. A copy of said Order was sent and received by claimant as reflected by certified mail, return receipt requested. In addition to the Order, claimant was to advise immediately whether he objected to respondents' Motion to Dismiss his claim for want of prosecution, and/or whether he had retained the services of another

attorney or wished to proceed *pro se*. Because claimant failed and/or refused to respond to the February 22, 2005, letter, a Notice of Hearing was sent March 17, 2005, at which time a hearing was scheduled for April 22, 2005. The subject of the hearing was respondents' Motion to Dismiss the claim. Notice of said hearing was received, as reflected by certified mail, return receipt requested, with a date of delivery shown as March 18, 2005. Again, the claimant failed and/or refused to appear at the scheduled hearing.

Pursuant to a recent decision, *Dillard vs. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___ (September 22, 2004)(CA 04-025), a hearing was scheduled on April 22, 2005. The subject of the hearing was respondents' Motion to Dismiss. The notice indicated failure to appear would result in dismissal of the claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant has failed to prosecute his claim.
3. 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 appear at a 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. In view of the foregoing, this claim is hereby dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge