

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F402299**

**SUE WIMBERLY, EMPLOYEE**

**CLAIMANT**

**GEORGIA PACIFIC CORPORATION,  
SELF-INSURED, EMPLOYER**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT SERVICES  
(TPA), INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JUNE 2, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 22, 2005,  
in Monticello, Drew County, Arkansas.

Claimant failed to appear.

Respondents represented by Mr. Andrew M. Ivey, Attorney at Law, Little Rock,  
Arkansas.

A hearing was held on April 22, 2005, to determine whether the above-  
referenced claim should be dismissed for want of prosecution.

The hearing was scheduled on respondents' Motion to Dismiss for Want of  
Prosecution filed March 31, 2005, pursuant to Rule 13 of the Commission. A  
certificate of service was sent to the claimant. Claimant did not appear for the hearing  
but, rather, entered into a consent agreement to dismiss her claim with respondents,  
which was presented as an exhibit at the hearing in this matter.

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

### **STATEMENT OF THE CASE**

The claimant filed an AR-C request for benefits for an alleged gradual onset injury to her right shoulder, which allegedly manifested itself on or about February 16, 2004. Counsel for claimant was relieved as counsel by an order of the Commission in January of 2005. Subsequently, the pro se claimant requested a hearing in the matter in or around January 2005.

The matter was set for a full hearing on April 22, 2005. On March 25, 2005, claimant withdrew both her hearing request and her desire to pursue this claim in a letter addressed to this Administrative Law Judge. The file was returned by this Administrative Law Judge to general files on March 29, 2005. Respondents then filed, on March 31, 2005, a Motion for Want of Prosecution and Brief in Support thereof, pursuant to Commission Rule 13. A hearing was set for April 22, 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). In the interim, claimant, acting pro se, and respondents entered into a consent agreement to dismiss claimant's case, which was introduced as an exhibit at the April 22, 2005, hearing on this matter.

## **FINDINGS OF FACT**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. On March 24, 2005, claimant sent a letter to the Commission requesting that her claim be dismissed;
3. The claimant entered into a consent agreement with respondents for the dismissal of her claim, which was introduced as an exhibit at the hearing on respondents' motion to dismiss;
4. The claimant failed to appear at the initial hearing pursuant to Rule 13.

## **DISCUSSION**

A review of the evidence shows the claimant has had ample opportunity to pursue her case but has chosen not to and failed to appear at the scheduled hearing, instead entering into an agreed consent order to dismiss her claim with respondents.

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

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.)

At the request of both parties herein, this case is dismissed pursuant to Rule 13.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge