

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F501090**

**PAMELA S. CALVA, EMPLOYEE** **CLAIMANT**

**U S A DRUG,  
EMPLOYER** **RESPONDENT**

**ST. PAUL FIRE & MARINE INSURANCE CO.  
C/O ST. PAUL TRAVELERS,  
INSURANCE CARRIER** **RESPONDENT**

**OPINION FILED JANUARY 6, 2006**

Hearing before Administrative Law Judge Cynthia Estes Rogers on January 5, 2006,  
Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Mr. Joseph E. Kilpatrick, Attorney at Law, Little Rock,  
Arkansas.

A hearing was held on January 5, 2006, to determine whether the above-referenced claim should be dismissed for want of prosecution pursuant to Rule 13 of the Rules of the Arkansas Workers' Compensation Commission.

The hearing was scheduled on respondents' Motion to Dismiss filed October 13, 2005, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant. Claimant filed no written response to respondents' motion but appeared for the hearing to contest the Motion to Dismiss.

After review of the file and testimony of the claimant at the hearing, I find that respondents' motion should, at this time, be denied.

### **STATEMENT OF THE CASE**

The claimant filed with the Commission on February 4, 2005, a Form AR-C seeking benefits for a knee injury she allegedly sustained on June 21, 2004. On February 28, 2005, claimant filed a *pro se* request for a hearing. Respondents controverted the claim, and the matter was submitted to a legal advisor for mediation. According to the file, attempts to mediate failed, and the case was then assigned to this Administrative Law Judge in May of 2005.

Claimant was sent a Prehearing Questionnaire on July 12, 2005. She admits that she received it and "thought" she had filled it out, although her responses were never received by the Commission. Claimant acknowledged that she received a letter from the Commission, dated August 16, 2005, informing her that because no responses had been received to the Prehearing Questionnaire, her case was being returned to open general files. She acknowledged that, upon receipt of that letter, she did not attempt to contact the Commission to object or request a hearing, or anything.

She acknowledged receiving a letter from the Commission, dated October 24, 2005, informing her that on October 13, 2005, respondents had filed a motion to dismiss for want of prosecution and that if she objected to her case being dismissed, she should contact the Commission within twenty days of receipt of that letter. She

admitted that, still, she did not attempt to contact the Commission to object to the motion to dismiss or request a hearing. Claimant's only excuse for her failure to file responses to the Prehearing Questionnaire or to file *anything* after her initial filing of the Form AR-C and initial request for hearing on February 28, 2005, was that she had been attempting to hire an attorney and just "did not know what to do."

However, claimant testified that it is her desire to move forward with her case, and she now requests a hearing. She testified that she now understands that she must file responses to the Prehearing Questionnaire and must comply with discovery in order to move her case forward. She requests that respondents' motion to dismiss be denied.

#### **FINDINGS OF FACT**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. On February 4, 2005, claimant filed a Form AR-C seeking benefits for a knee injury she alleges occurred on June 21, 2004;
3. On February 28, 2005, claimant, acting *pro se*, requested a hearing, and the file was sent to Legal Advisors for mediation;
4. Mediation failed, and the case was assigned to this ALJ in March of 2005;

5. Claimant was sent a Prehearing Questionnaire that she has never filed answers to;
6. Claimant has failed to file anything or request a hearing since February 28, 2005;
7. On August 16, 2005, the case was returned to open general files;
8. On October 13, 2005, respondents filed a Motion to Dismiss for Want of Prosecution;
9. Claimant failed to file a written response to respondents' motion to dismiss;
10. The claimant did appear at the scheduled hearing on the motion on January 5, 2006, to request that her case not be dismissed;
11. Respondents' motion to dismiss is denied at this time.

### **DISCUSSION**

A review of the file and testimony of the claimant shows the claimant failed to respond to the Prehearing Questionnaire sent to her by the Commission on July 12, 2005, and failed to request a hearing since February 28, 2005, prior to her claim being assigned to this Administrative Law Judge; however, she did appear at the scheduled hearing on respondents' motion to dismiss and indicates a willingness to pursue her claim and requested a hearing be set.

Arkansas Code Annotated § 11-9-702(a)(4) states as follows:

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 the limitation periods specified in subsection (a)(1)-(3) of this section.

[Emphasis added.]

Moreover, 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.)

[Emphasis added.]

Because of claimant's appearance at the hearing on the motion to dismiss and her indication that she wishes to pursue her claim, that she simply did not understand the process, and that she will now cooperate with moving her case forward, respondents' motion to dismiss this case for failure to prosecute pursuant to Rule 13 is denied at this time.

IT IS SO ORDERED.

---

CYNTHIA ESTES ROGERS  
Administrative Law Judge