

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F506627

**AMY E. CLARK,
EMPLOYEE**

CLAIMANT

**TRANSAMERICA
WORKSITE MARKETING,
EMPLOYER**

RESPONDENT

**LEGION INSURANCE CO.;
ARKANSAS PROPERTY &
CASUALTY GUARANTY FUND;
CRAWFORD & COMPANY,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED OCTOBER 23, 2006.

Pursuant to a hearing conducted October 4, 2006, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Ms. Melissa Ross, Attorney at Law, Little Rock, Arkansas, appearing for the respondents, and

Ms. Amy Clark, Little Rock, Arkansas, pro se, failing to appear.

STATEMENT OF THE CASE

This was a hearing to consider the Motion to Dismiss filed on behalf of the respondents.

A review of the file shows that the claimant filed a Form AR-C dated June 28, 2005, alleging that she developed compensable carpal tunnel syndrome and requesting temporary total disability benefits and a change of physician.

In a July 25, 2005, letter the respondents denied the claim, contending either that it was barred by the statute of limitations if it occurred in 1993, or that the correct date of injury was January 12, 2005, outside the coverage period of the carrier. Similar contentions were stated in a Form AR-2 dated July 29, 2005.

On February 6, 2006, the Commission received a Motion to Dismiss for failure to prosecute. In the accompanying letter, the respondents indicated that they had tried without success to schedule the claimant's deposition. A hearing notice dated February 7, 2006, was sent to the parties, setting a hearing on the Motion for March 8, 2006.

After the claimant's response was received on February 17, 2006, the hearing was cancelled and a telephone prehearing conference was scheduled for March 23, 2006. At the request of the claimant, the prehearing conference was rescheduled for April 26, 2006.

A prehearing order dated April 26, 2006, stated that the claimant contended that she suffered compensable bilateral carpal tunnel syndrome, first noticing symptoms of numbness and tingling in April, 2003. She stated that she first sought medical care in January, 2005, when symptoms had become worse. The claimant also stated that Becky Stewart in Human Resources had advised that a claim had been filed but the claimant was unable to confirm this and filed a Form AR-C in June, 2005. The order stated that the respondents contended that the claimant did not suffer compensable injuries and that such a claim was barred by the statute of limitations. They further contended that the claimant is not entitled to indemnity benefits because she has declined suitable employment which was made available by the employer. The claimant was advised of her right to an attorney and also that she has the burden of proving her case and should be represented by an attorney. She stated that she was attempting to retain an attorney and requested additional time for that purpose. She was advised that the respondents would pursue the Motion to Dismiss if she failed to pursue her claim.

In a May 10, 2006, the respondents advised the claimant that no attorney had been in contact with them concerning her claim. They enclosed medical authorizations and again advised that they wished to take the claimant's deposition.

On June 14, 2006, the respondents filed a second Motion to Dismiss for failure to prosecute and a hearing was scheduled for July 11, 2006. At the hearing, the claimant again requested additional time to retain an attorney and was granted 30 days for that purpose.

On August 31, 2006, the respondents filed a third Motion to Dismiss for failure to prosecute and a hearing was scheduled for October 4, 2006. Written notice of the hearing was sent to the claimant by certified and regular mail at her last known address. The claimant failed to appear at the hearing and appears to have abandoned her claim.

Accordingly, the Motion to Dismiss should be, and it is hereby, granted, and the claim for additional benefits herein is dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge