

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F506181

MICHAEL CLOPTON, EMPLOYEE	CLAIMANT
KNIGHTS, INC., EMPLOYER	RESPONDENT
COMPANION PROPERTY & CASUALTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED SEPTEMBER 29, 2006

This matter comes before the Commission on the respondents' Motion to Dismiss for Failure to Prosecute. The claimant sustained an injury to his left middle finger on July 5, 2004, and benefits were paid. The parties agreed to a Joint Petition for final settlement and a hearing was set before the Commission on February 2, 2006. The claimant failed to appear for the scheduled hearing. The claimant has failed to contact counsel for the respondents and has not made any other attempts to prosecute his claim. Respondents filed a Motion to Dismiss for Failure to Prosecute on June 26, 2006. The Commission gave notice of the motion to the claimant by letter dated June 28, 2006, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of his claim. No response thereto has been received from the claimant. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail. The claimant failed to appear at the hearing scheduled on September 27, 2006. The claimant has filed no request for hearing within the last six (6) months.

Commission Rule 13 provides in relevant 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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge