

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F500040

JUANITA COLE, EMPLOYEE	CLAIMANT
MEYER'S BAKERIES, INC, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JULY 19, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on May 3, 2006, at Texarkana, Miller County, Arkansas.

JUANITA COLE, Pro Se Claimant did not appear at the hearing.

Respondents represented by HON. JARROD PARISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on May 3, 2006, in Texarkana, Arkansas, to determine whether the above-captioned claim should be dismissed for want of prosecution pursuant to *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W. 3d ___ (2004). After a review of the record, Commission's file, and all other matters properly before the Commission, I find this claim shall be dismissed without prejudice for want of prosecution.

The claimant originally filed an AR-C with the Ark. Workers' Compensation Commission on January 11, 2005, alleging pain and numbness in her right hand. The AR-C listed the date of claimant's injury as June 7, 2004. On March 17, 2005 this Administrative Law Judge sent claimant a prehearing questionnaire with instructions for pro se claimants. The

Cole, Juanita/F500040

claimant never responded to the Commission's prehearing questionnaire, and on April 13, 2005, this Administrative Law Judge sent the claim back to the Commission's general files.

The respondents continued with discovery, and requested the claimant execute a medical release.

The claimant advised the respondents she would only agree to a limited medical release, and on October 11, 2005, the respondents filed a Motion to Dismiss for failure to prosecute and a Motion to Compel a full medical release.

On November 20, 2005, this Administrative Law Judge entered an order compelling the claimant to execute a release that would allow the respondents all of the claimant's medical records. On January 5, 2006, this Administrative Law Judge denied the respondents' October 11, 2005 Motion to Dismiss.

On January 24, 2006, the respondents filed a Motion for Sanctions and another Motion to Dismiss for failure to prosecute. The respondents' Motion for Sanctions alleged the claimant had not complied with this Administrative Law Judge's November 30, 2005 Order to Compel.

A prehearing conference was scheduled for February 16, 2006 to set a hearing date on the respondents' pending motions. The claimant failed to be available for the prehearing conference and failed to file a written response to the respondents' January 24, 2006 motions.

This Administrative Law Judge set a hearing date for May 3, 2006 on Respondents' Motion to Dismiss, The notice of hearing was sent to the claimant by both certified and regular U.S. Mail. The claimant failed to appear at the May 3, 2006 hearing, but did send two letters to the Commission requesting her claim be cancelled.(Comm. Exs. 3 & 4)

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her claim, but has failed to prosecute this case. The alleged injury occurred over two years ago, and two years is more than adequate time to prepare a case for a determination of compensability. Furthermore, the claimant has requested in writing that her claim be cancelled and she failed to appear at both the prehearing conference and the full hearing.

There are two provisions for dismissal of claims:

- 1) A.C.A. §11-9-702(a)(4) and;
- 2) Commission Rule 99.13, which states in part:

"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."

I make the following Findings of Fact:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The claimant has failed to adequately prosecute her claim, and pursuant to Commission Rule 99.13, this claim shall be dismissed without prejudice.

I find that the claimant has had adequate time to pursue her claim and that her delay in prosecuting her claim has been unreasonable.

Cole, Juanita/F500040

ORDER

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Commission Rule 99.13 of the Arkansas Workers Compensation Commission.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge