

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402618

HELEN CONINE

CLAIMANT

FORT SMITH HEALTH CARE & REHAB

RESPONDENT

ROYAL INDEMNITY INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 28, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant pro se.

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

OPINION

On October 16, 2006, the respondents filed a Motion seeking a dismissal of this claim, without prejudice, for lack of prosecution. A copy of this Motion was made Commission's Exhibit No. 1. A hearing was set on this Motion. Notice of this hearing was given the claimant by certified mail return receipt requested. This notice was returned by the U. S. Post Office as refused or unclaimed by the addressee. A copy of this notice was made Commission's Exhibit No. 2. The remainder of the Commission's file was also made Commission's Exhibit No. 3 and incorporated by reference in the hearing transcript.

STATEMENT OF THE CASE

\_\_\_\_\_A claim for initial benefits was made by the claimant by an ARC filed on her behalf by her attorney, Gunner DeLay, on March 29, 2004. The respondents denied that the claimant sustained the

alleged compensable injury and controverted the claim in its entirety.

A prehearing conference was scheduled for May 25, 2004. This conference was subsequently rescheduled for June 15, 2004. This scheduled prehearing conference was cancelled at the request of the claimant's attorney and returned to general files.

On June 14, 2004, the respondents requested this claim be dismissed for want of prosecution. A hearing was set on this Motion for July 20, 2004. At the hearing the claimant's attorney, Mr. Gunner DeLay, announced that, as long as the dismissal was without prejudice, the claimant was not contesting the Motion. He also announced that he had been unable to obtain any medical evidence that linked the claimant's difficulties to her employment and was therefore in no position to try her disputed claim. A dismissal, without prejudice, was entered on July 21, 2004.

Shortly after this dismissal, the claimant wrote to inquire as to what had transpired at the hearing. By letter dated August 4, 2004, I attempted to respond to her inquiry.

By letter dated January 20, 2005, the claimant personally requested a hearing on her claim. She reviewed her request by letter dated July 19, 2005. A prehearing conference was subsequently scheduled for August 30, 2005. As a result of this conference, a Prehearing Order was entered on September 1, 2005, that scheduled this matter for hearing on November 15, 2005. This hearing had to be continued as a result of the claimant's failure to timely provide the respondents with medical releases.

The claimant ultimately provided the respondents with the requested releases and other discovery. As a result, this case was reset for hearing on June 20, 2006. This resetting occurred at a third prehearing conference that was held on April 18, 2006.

On the afternoon of June 20, 2006, the claimant called and advised that she had been called out of state for an emergency and could not be present at the scheduled hearing.

In a subsequent letter she requested that this case not be reset, at that time, because she "planned to move out of state soon any way." The respondents objected and requested an immediate resetting. These matters were addressed by a letter to the parties, dated July 5, 2006.

On October 13, 2006, the respondents again requested this case be dismissed for lack of prosecution. The respondents' Motion indicates a copy was sent to the claimant's last known address.

A notice of hearing on the respondents' Motion was sent by the Commission to the claimant's last known address, certified mail. This notice was subsequently returned by the U. S. Post Office, as "unclaimed."

No response has been received from the claimant to the respondents' Motion. The claimant did not appear at the scheduled hearing on the respondents' Motion.

After consideration of the respondents' Motion, in light of the claimant's previous conduct and her failure to respond to this Motion, I find that the claimant has not been diligent in prosecuting her claim. Therefore, the respondents' Motion should

be granted, under the authority of Commission Rule 099.13. This dismissal is without prejudice to refiling under the time limits allowed by Ark. Code Ann. §11-9-702(a).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. An initial claim for benefits was filed by the claimant with this Commission on March 29, 2004.
3. The claimant has not been diligent in her prosecution of this claim.
4. A dismissal of this claim, without prejudice, is proper under Commission Rule 099.13.

ORDER

Based upon the foregoing Findings of Fact & Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. This dismissal is without prejudice to its refiling within the time period allotted by Ark. Code Ann. §11-9-702(a).

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE