

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603283

GREG D. CORLEY

CLAIMANT

**JOHN HESTER
(UNINSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED SEPTEMBER 12, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear. The certified mail card was returned signed and was made an exhibit.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed July 7, 2006, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claimant filed a written request for benefits for a January 30, 2006, shoulder injury. An AR-2 filed March 2, 2006, indicates the claim was the result of a fall injuring multiple body parts.

Respondents deny the employment relationship contending the claimant was an independent contractor. Respondents alternatively contend the claimant did not sustain a compensable injury and respondents rely on the results of a positive drug test. Respondents further contend the claimant has failed to respond to discovery requests.

The respondents filed a motion to dismiss and the hearing notice was mailed on July 25, 2006, in accordance with *Dillard v. Benton County Sheriff's Office*, ___ Ark App. ___, ___ S.W.3d ___ (9-22-04/CA 04-025).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but has failed to respond to written notices, has failed to cooperate with discovery, and failed to appear at the scheduled hearing.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):
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 limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 13:
The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant failed to cooperate with discovery and has failed to appear at the dismissal hearing.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**