

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F500791**

<b>VICTORIA COSSEN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>JEFFERSON HOSPITAL ASSOCIATION, EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MAY 31, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on May 26, 2006, at Pine Bluff, Jefferson County, Arkansas.

Claimant and her attorney, the HONORABLE PHILIP M. WILSON, did not appear at the hearing.

Respondents represented by the HONORABLE WILLIAM M. "SHANE" BRIDGFORTH, Attorney at Law, Pine Bluff, Arkansas.

**ISSUES**

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, \_\_\_ S.W.3d \_\_\_ (2004).

After review of the Commission's file, I find the Motion to Dismiss this case with prejudice should be granted.

**STATEMENT OF THE CASE**

The claimant filed a letter on February 17, 2005, requesting a hearing on an alleged November 15, 2004 right lower extremity injury. Mr. Wilson filed a letter of representation on February 23, 2005 along with an AR-C. The claim was controverted in its entirety. Discovery was initiated but the claimant failed to respond to a request to set the deposition. There has been no activity on this file since June, 2005.

On February 21, 2006, the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to claimant's counsel. Mr. Wilson did not specifically address the Motion, but did request a hearing (the letter, dated November 10, 2005, was received March 3, 2006).

A hearing notice was sent to the claimant and her attorney by certified mail on April 4, 2006, setting this case for a dismissal hearing.

### **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue her case but she has failed to respond to written notices 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 appear at the initial hearing pursuant to Rule 13.

I find the claimant has had adequate time to investigate this claim and respond to the Notices.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge