

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F402417**

**DAVID B. GARRETT**

**CLAIMANT**

**UNITED PARCEL SERVICE, INC.**

**RESPONDENT EMPLOYER**

**LIBERTY MUTUAL INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JULY 17, 2006**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant did not appear at the hearing.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was held on June 30, 2006, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear. A return receipt reflected the notice was signed for on May 23, 2006.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed June 1, 2005 and re-filed on April 25, 2006, pursuant to Rule 13 of the Commission. Certificates of service were sent to the claimant.

After a 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 Form AR-C on March 31, 2004, requesting additional benefits for a compensable injury sustained on February 16, 2004. The injury was accepted as compensable with medical paid but there was a dispute regarding temporary total disability benefits. The claimant sent a letter dated June 6, 2006, saying a satisfactory judgment had been received and he no longer wished to continue with the proceedings. Respondents contend it has been more than two years since the date of the injury and more than a year since the last payment of compensation; therefore, the claim is barred by the statute of limitations.

Respondents filed a Motion to Dismiss and the hearing notice was mailed on May 19, 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 appear at the scheduled hearing. The claimant has not requested a hearing within the last six months.

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 has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the dismissal hearing pursuant to Rule 13.

At the request of the respondents, this case is dismissed with prejudice for failure to prosecute pursuant to Rule 13.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**