

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404670

JASON M. HAMILTON, EMPLOYEE

CLAIMANT

**BURNETTS LANDSCAPING SUPPLY &
NURSERY, EMPLOYER**

RESPONDENT

FIRST COMP INSURANCE COMPANY, CARRIER

RESPONDENT

OPINION FILED MAY 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 9, 2006 at Little Rock, Pulaski County, Arkansas.

Claimant, pro se, failed to appear at the hearing.

Respondents represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, 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 should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C on May 20, 2004, alleging a May 6, 2004 injury to his ear which was accepted by the respondents and paid as a "medical only" claim. The claimant requested a mediation conference regarding indemnity benefits and hearing loss. When the carrier did not respond, the file was assigned to the Adjudication Division.

A prehearing conference was held and an order issued on March 8, 2005. The claimant was advised that additional medical information was needed and he was given an opportunity to discuss his case with an attorney. There has been no further activity in

the file. The respondents filed a Motion to Dismiss this claim for lack of prosecution. To date, there has been no reply to the Motion and no request for a hearing from the claimant.

A hearing notice was sent to the claimant by certified mail on the issue of the Dismissal of the claim. The notices have not been returned and the claimant has not contacted the Commission. It does appear from the file that the claimant has availed himself of the opportunity to discuss his case with the Legal Advisor Division.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but he 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 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 and §11-9-702(a)(4) of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge