

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F500003

JOHNNY HARPER, EMPLOYEE

CLAIMANT

**KIMBERLY-CLARK CORPORATION,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED NOVEMBER 16, 2006

This matter comes before the Commission on the respondents' Motion to Dismiss for Failure to Prosecute. The claimant filed a Form AR-C with the Commission on January 3, 2005, alleging an injury to his lower back on November 23, 2004. Respondent employer filed a Form 1 with the Commission on January 10, 2005. On February 3, 2005, respondents filed a Form AR-2 with the Commission indicating the claim had been controverted. On February 15, 2005, the Commission received a letter from claimant's attorney, Mr. Thomas Mickel, requesting a hearing on the issue of compensability. The file was assigned to an Administrative Law Judge and Prehearing Questionnaire responses were received from both parties. A prehearing telephone conference was held and a Prehearing Order filed on April 11, 2005, scheduling the hearing in this matter for April 28, 2005. On April 25, 2005, claimant's attorney faxed a letter to the Commission requesting that the hearing scheduled for April 28, 2005, be cancelled in order to allow the claimant time to consider a settlement offer. The hearing was cancelled by letter dated April 25, 2005. No further action was taken by either party and the file was returned to the Commission's general files on July 27, 2005. Respondents filed a Motion to Dismiss for Failure to Prosecute on July 27, 2006. The

Commission gave notice of the motion to the claimant's attorney by letter dated August 7, 2006, sent via certified mail and first-class mail. The claimant's attorney sent a letter to the Commission dated September 8, 2006, requesting that he be allowed to withdraw as claimant's attorney. By letter dated September 13, 2006, the claimant was advised of his attorney's motion to withdraw and was also advised of respondents' Motion to Dismiss. The claimant was given twenty days to respond and was further advised that if no response was received, the motion to withdraw by his attorney would be granted and the motion to dismiss would be set for hearing. No response thereto has been received from the claimant. On October 13, 2006, an Order was entered relieving Mr. Thomas Mickel as attorney for the claimant. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant failed to appear at the hearing scheduled on November 8, 2006. The claimant has filed no request for hearing within the last six (6) months.

Commission Rule 13 provides in relevant part as follows:

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of

compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge