

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F510836

CORA S. HAWLEY, EMPLOYEE	CLAIMANT
CONTINENTAL EXPRESS, INC., EMPLOYER	RESPONDENT
GIBRALTAR NATIONAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED AUGUST 28, 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 October 11, 2005. Respondents' attorney sent a letter dated October 28, 2005, to the claimant advising her of their representation of respondents and requesting that claimant sign and return three releases. Respondents filed a Motion to Dismiss for Failure to Prosecute on April 6, 2006. The Commission gave notice of the motion to the claimant by letter dated April 11, 2006, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of her claim. The claimant contacted the Commission by telephone on April 27, 2006, and advised she had a new address and phone number. The Commission's letter dated April 11, 2006, was mailed again to the claimant's new address on April 27, 2006, and was sent via certified mail and first-class mail. The claimant contacted the Commission by telephone on May 1, 2006, in response to respondents' Motion to Dismiss. Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties by this Administrative Law Judge on May 2, 2006. Respondents filed a

response to the Prehearing Questionnaire on May 24, 2006. The claimant failed to file a response to the Prehearing Questionnaire, and by letter dated June 8, 2006, the file was returned to the Commission's general files. Respondents' attorney sent a letter to the claimant dated June 12, 2006, requesting again that she sign and return the three releases and to contact their office to schedule a telephone deposition. Respondents' attorney sent a letter to the Commission dated June 13, 2006, requesting that the Commission reconsider respondents' Motion to Dismiss and filed another formal Motion to Dismiss for Failure to Prosecute on June 23, 2006. The Commission gave notice of the motion to the claimant by letter dated June 20, 2006, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of her claim. No response thereto has been received from the claimant. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail. The claimant failed to appear at the hearing scheduled on August 23, 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