

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F512409

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| JESSE HENDERSON, EMPLOYEE | CLAIMANT |
| DOUBLE N CONSTRUCTION, INC., EMPLOYER | RESPONDENT |
| ACE PROPERTY & CASUALTY INSURANCE COMPANY, INSURANCE CARRIER | RESPONDENT |

OPINION AND ORDER OF DISMISSAL FILED OCTOBER 19, 2006

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant filed a Form AR-C with the Commission on November 18, 2005, asserting a low back and left hip injury that he alleges occurred on October 17, 2005. In response to correspondence from the Commission dated November 18, 2005, the respondents submitted a Form AR-1 and a Form AR-2, indicating that respondents controverted the claim. Respondents propounded Interrogatories and sent authorizations to the claimant for his review and execution on November 30, 2005. The claimant has not furnished executed authorizations nor discovery responses in compliance with the Arkansas Rules of Civil Procedure. Since submitting the Form AR-C, the claimant has taken no additional action to pursue his claim. Respondents filed a Motion to Dismiss on July 14, 2006. The Commission gave notice of the motion to the claimant by letter dated July 20, 2006, sent via certified mail and first-class mail. The letter was received by claimant as evidenced by the certified mail return receipt signed by the claimant dated July 27, 2006. The claimant was warned therein that failure to respond may result in a dismissal of his 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 on August 23, 2006, and received by claimant, as evidenced by the certified mail return receipt signed by the claimant dated August 24, 2006. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant contacted the Commission by telephone on August 28, 2006, and advised that he did not have the funds to pursue his claim and that his witness had moved out of state. The claimant failed to appear at the hearing scheduled on October 18, 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.

Henderson - F512409

3

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge