

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F403448

**JOHN LLOYD HOLMES,
EMPLOYEE**

CLAIMANT

**LABOR FINDERS,
EMPLOYER**

RESPONDENT

**ACE AMERICAN
INSURANCE CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED APRIL 26, 2006,

Pursuant to a hearing conducted April 4, 2006, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas, appearing for the respondents, and

The claimant, pro se, not in attendance.

STATEMENT OF THE CASE

This was a hearing to consider a Motion to Dismiss for failure to prosecute, filed on behalf of the respondents.

A review of the record shows on April 5, 2004, the Commission received a First Report of Injury dated April 1, 2004, indicating that the claimant suffered multiple injuries, including fractures to his right calcaneous, his lumbar spine, his right ankle, and his left tibial plateau when he fell from a roof during his employment with the respondent employer.

The respondents accepted the claim as compensable and initiated payment of benefits. On April 22, 2004, the Commission received a letter dated April 21, 2004, from Mr. Thomas W. Mickel, Attorney at Law, advising that he represented the claimant and requesting a copy of the file. On May 10, 2004, the Commission received a letter dated May 5, 2004, advising that Mr. Eric Newkirk,

Attorney at Law, represented the respondents and also requesting a copy of the file, as well as a claims history search concerning the claimant.

Benefits were paid until August, 2004, when payment of benefits was suspended because of the claimant's alleged non-compliance with recommended medical care, according to the letter received by the Commission August 12, 2004, and dated August 10, 2004. In that letter, the respondents requested an Order allowing termination of benefits due to non-compliance, if the claimant failed to attend his next scheduled appointment with Dr. Gruenwald, scheduled for August 12. On August 20, 2004, the Commission received a Form AR-2 dated August 16, 2004, and indicating that the claim was being controverted because of the claimant's failure to comply with home health care and his failure to attend physical therapy recommended by his physicians.

A hearing was requested by claimant's counsel and a telephone prehearing conference was scheduled for December 21. A Prehearing Order was filed December 22, 2004, scheduling a hearing for February 15 to address the issues of additional medical care, the claimant's average weekly wage, and an attorney's fee. The claimant's deposition was taken on or about January 13, 2005, but claimant's counsel requested a continuance of the hearing. After the hearing was cancelled, the Commission received a letter dated July 19, 2005, from claimant's counsel requesting permission to withdraw as Attorney of Record for the claimant. An Order dated July 27, 2005, granted this Motion and Mr. Mickel was permitted to withdraw as claimant's Attorney of Record.

Since that time, there has been no action taken on behalf of the claimant in this claim and a Motion to Dismiss was filed on March 3, 2006. A hearing was scheduled and notice of the hearing and a copy of the Motion was sent to the claimant at his last known address by certified and regular mail. The claimant did not respond to the Motion and did not attend the hearing.

Accordingly, the Motion to Dismiss should be, and it is hereby granted, and this claim for additional benefits is hereby dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge