

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509765

SHERMAN HOLMES	CLAIMANT
CRACKER BARRELL	RESPONDENT
ACE AMERICAN INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 29, 2006

Before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant not represented by counsel.

Respondents represented by ERIC NEWKIRK, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 26, 2006, in Fort Smith, Arkansas. This hearing was held for the purpose of dealing with the respondent's Motion to Dismiss without Prejudice, under the authority of Rule 099.13 of this Commission (and possibly Ark. Code Ann. §11-9-702(a)(4)). Appropriate notice of this hearing was given to all parties in the manner prescribed by law.

The respondent's appeared through counsel. However, the claimant did not appear, but did respond to the Motion, prior to the hearing.

The respondent's Motion and the claimant's response were made Commission's exhibits and were placed into the record of the hearing. The remainder of the Commission's file was also made a Commission's exhibit but was incorporated only by reference in the hearing transcript.

DISCUSSION

The Commission's file reflects that a claim for initial benefits was filed by the claimant on September 14, 2005. The respondent's denied any compensable injury and controverted the claim in its entirety.

After filing this claim, the claimant has taken no action to prosecute it to fruition. There has been no request for a hearing, nor is there any indication of any activity instituted by the claimant.

After the respondent filed this Motion to Dismiss the claimant requested continuances of the hearing on the Motion, due to various alleged health reasons that do not appear to be related in any way to the alleged employment related injury.

Ultimately, a faxed correspondence was received, purportedly from the claimant. In this correspondence, the claimant appears to consent to the dismissal of his claim.

Therefore, after consideration of the evidence presented I find the respondent's Motion well taken. Pursuant to the provisions of Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13 of this Commission, this claim for initial benefits should be dismissed without prejudice to refiling within the time period allotted by Ark. Code Ann. §11-9-702(a).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. An initial claim for benefits was filed by the claimant

on September 14, 2005, and was promptly controverted in its entirety by the respondent.

3. No request for a hearing has been made by the claimant since the filing of his claim, and no action has been taken by the claimant in furtherance of his claim.
4. Under the provisions of Ark. Code Ann. §11-9-702(a)(4) and Commission's Rule of 099.13, the respondent is entitled to a dismissal of this claim in its entirety but without prejudice to refiling within the time allowed by law.

ORDER

Based upon my foregoing Findings of Fact & Conclusions of Law, I have no alternative, but to dismiss this claim in its entirety. This dismissal is without prejudice to the refiling of this claim within the period allowed by Ark. Code Ann. §11-9-702(a).

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge