

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502336

JIMMY HUGHES	CLAIMANT
TWIN RIVERS FOODS, INC.	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 13, 2006

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

Claimant not represented by counsel.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 12, 2006. This hearing was set as a result of a Motion to Dismiss, filed by the respondents on August 11, 2006. Notice of this Motion and the scheduled hearing was given the claimant by certified mail, return receipt requested. Neither the notice, itself, nor the receipt has been returned by the U. S. Post Office.

The respondents were present at the hearing through counsel. The claimant did not appear, either in person or through counsel. No response has been made by the claimant to the Motion.

The Motion, itself, was made Commission's Exhibit No. 1 to the hearing. The entire file of the Commission was also made an exhibit to the hearing and was incorporated by reference into the transcript.

DISCUSSION

_____A claim was originally filed in this case on April 22, 2005, by claimant's then attorney, Mr. Dean Garrett. The respondents

denied any compensable injury and controverted this claim in its entirety.

No further action was taken by the claimant at that time. On November 2, 2005, Dorothy Jackson, Clerk of the Commission, advised Mr. Garrett that she was treating a letter from Jeff Johnson (a claims adjuster for Liberty Mutual) as a Motion to dismiss the claim for lack of prosecution and failure to timely request a hearing. There is no evidence that any Order of Dismissal was entered.

However, on November 3, 2005, a letter from Mr. Garrett was filed with the Commission that requested assignment of the claim to an ALJ for hearing. This case was then assigned to me for this purpose.

A prehearing conference was held on December 13, 2005, and a prehearing Order was entered on December 14, 2005. This prehearing Order set this case for hearing on the issue of compensability and appropriate benefits for February 21, 2006.

Unfortunately, the claimant's attorney died shortly before the scheduled hearing. As a result, the hearing was indefinitely continued to allow the claimant the opportunity to retain new counsel. The Commission's file reflects that since that time the claimant has taken no further action to pursue his claim. Thus, the respondents renewed their Motion on August 11, 2006.

After consideration of the respondent's Motion, the claimant's failure to respond or appear at the scheduled hearing, and the past history of this claim (as shown by the Commission files), I find

the respondent's Motion to be well founded. Therefore, this Motion should be and hereby is granted.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. This claim represents an initial claim for benefits.
3. The evidence shows that the claimant has failed to diligently pursue his claim and has not sought a hearing on this claim within the last six (6) months.
4. This claim should properly be dismissed without prejudice for lack of diligent prosecution and failure to timely request a hearing, under the authority of Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13.

ORDER

Based upon my foregoing Findings & Conclusions, this claim should be and hereby is dismissed. This dismissal is without prejudice to refile within the time allotted by Ark. Code Ann. §11-9-702(a).

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge