

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400914

HUGH JONES	CLAIMANT
EMERSON ELECTRIC	RESPONDENT
SEDGWICK CMS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 11, 2006

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

Claimant pro se (not appearing).

Respondents represented by J. LESLIE EVITTS, III, Attorney, Fort Smith, Arkansas.

OPINION AND ORDER

On August 30, 2006, a Motion was filed by the respondent to dismiss any pending claims for additional benefits for lack of prosecution. A copy of this Motion was made Commission's Exhibit No. 1 to the hearing.

A hearing was set on the respondent's Motion for 1:00 p.m. on October 10, 2006, in the Commission's office in Fort Smith, Arkansas. Notice of the hearing on this Motion was provided to the claimant by certified mail return receipt requested. A copy of this notice was made Commission's Exhibit No. 2 to the hearing. The certified receipt of delivery signed by the claimant was returned by the U. S. postal authorities. A copy of this receipt was also made a portion of Commission's Exhibit No. 2. The remainder of the Commission's file was also made an exhibit to this hearing, but was incorporated by reference in the transcript of the most current proceeding.

DISCUSSION

\_\_\_\_\_A review of the Commission's file reflects that the claimant received a compensable injury, in the form of an electrical shock, on November 18, 2003. All appropriate benefits were voluntarily paid by the respondent through August 12, 2004.

On January 22, 2004, the claimant filed with this Commission a claim for additional benefits. In this claim he specifically requested permanent partial disability benefits, additional medical expenses, rehabilitation, attorney's fee, and a change of physicians.

A hearing was held on this claim for additional benefits on April 12, 2005. On June 30, 2005, an Opinion was entered that granted the claimant additional benefits. These benefits were in the form of medical evaluations and testing that had been recommended by Dr. William Daniel. No appeal was taken from this Order. To some extent, the recommended evaluation and testing was carried out.

However, it appears that the claimant failed to keep appointments for the last series of the tests recommended. The claimant has offered no explanation for his failure to cooperate in the recommended testing.

As a result of the claimant's actions, the claimant's attorney requested permission to withdraw as counsel of record on August 10, 2006. Although notified by the Clerk of this request, there is no evidence in the Commission's file that the claimant objected or made any response to the Motion of his attorney to withdraw. The

claimant's attorney was allowed to withdraw as the claimant's attorney of record by Order of the Full Commission, which was dated August 23, 2006.

Since the entry of this Order, no action has been taken by the claimant to comply with the recommended medical evaluation or to in any way pursue his pending claim for additional benefits.

After consideration of all the evidence presented, I find that the claimant's failure to cooperate with the requested medical testing and his failure to take any further action to pursue his current claim for additional benefits is sufficient to establish a lack of due diligence in the prosecution of his current claim for additional benefits. The claimant's failure to diligently prosecute his current claim for additional benefits is sufficient grounds to grant the respondent's Motion to Dismiss these pending claims. However, this Dismissal is without prejudice to refiling any claims for additional benefits within the time allotted by Ark. Code Ann. §11-9-702(b).

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On November 18, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On November 18, 2003, the claimant sustained a compensable injury, in the form of a work related electrical shock.

4. All initial appropriate benefits, both in the form of medical services and temporary disability, were voluntarily paid by the respondent.
5. The claimant made a claim for additional benefits on January 22, 2004. Some of the additional benefits that were sought by the claimant in this claim were granted in the Opinion of June 30, 2005. The remainder of the benefits request by the claimant were reserved for subsequent determination (if necessary), upon completion of the ordered evaluations and testing.
6. The claimant has failed to fully cooperate or participate in the recommended evaluation and testing and has failed to diligently pursue his entitlement to any of the other additional benefits previously requested. This represents sufficient grounds for a dismissal of any pending claims for additional benefits, pursuant to the authority granted by Commission Rule 099.13. This dismissal is without prejudice to refiling any claims for additional benefits within the time period allotted by Ark. Code Ann. §11-9-702(b).

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss any pending claims for additional benefits. This dismissal is without prejudice to the refiling of any such claims within the time period allotted by Ark. Code Ann. §11-9-702(b).

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge