

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F109938

**HUBRIEL MARTINEZ,
EMPLOYEE**

CLAIMANT

**MCGEORGE CONTRACTING CO.,
EMPLOYER**

RESPONDENT

**TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED OCTOBER 23, 2006,

Pursuant to a hearing conducted September 7, 2006, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas, representing the claimant, not appearing, and

Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

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

A review of the file shows that the claimant sustained a compensable injury to his low back while lifting steel during his employment as a welder on August 15, 2001. He did not immediately report the incident because he hoped it might go away. However, the next day at work, he felt his right leg getting numb and found that he was having difficulty walking, so he reported the incident to his supervisor and was afforded medical care at the emergency room at St. Vincent Hospital. He was later treated at Baptist Hospital, as well.

The respondents accepted the claim as compensable and initiated payment of benefits for temporary total disability and medical and related expenses.

Thereafter, benefits were terminated and the claimant contacted the Legal Advisor Division and filed a Form AR-C September 10, 2001. Thereafter, on October 10, 2001, a Form AR-C was filed on behalf of the claimant by his attorney, Mr. Philip M. Wilson.

A hearing was requested by the claimant and conducted January 15, 2002. The administrative law judge opinion dated April 12, 2002, denied benefits and the claimant did not appeal.

On March 20, 2003, the Commission received the request of claimant's counsel that a hearing be scheduled to consider the issues of additional medical care and the claimant's anatomical impairment. After a prehearing conference, a hearing was scheduled for June 6, 2003, to consider the extent of the claimant's permanent disability. Thereafter, pursuant to the advice of counsel, the hearing was cancelled in order to permit the parties to pursue settlement negotiations.

On September 26, 2003, claimant's counsel again requested that a hearing be scheduled. After a prehearing conference on November 4, 2003, an Order was entered stating that the parties agreed that additional discovery, including medical discovery, should be concluded before scheduling a hearing.

On February 9, 2004, claimant's counsel again requested a hearing and after a prehearing conference on February 24, 2004, a hearing was scheduled for April 21, 2004, to consider the issue of the claimant's permanent impairment.

This hearing was cancelled in order for the claimant to be seen by Little Rock neurosurgeon Dr. Jim Moore on May 18, 2004, at the expense of the respondents.

On July 28, the Commission received an additional request from claimant's counsel to schedule a hearing. On August 26, 2005, the prehearing conference was conducted and a prehearing

order was issued showing that the claimant contended that he sustained impairment in an amount equal to 55% to the body as a whole, while the respondents contended that such an impairment rating was not valid under Arkansas law and was not compensable. It was further noted that the parties were awaiting an additional opinion from Dr. Jim J. Moore based on his examination of the claimant in May, 2004, and that there was no indication that the claimant had actually attended this appointment. The file was returned to general files in order for the parties to pursue a second opinion and to attempt to resolve the dispute without the necessity of a hearing.

On August 10, 2006, the Commission received a Motion to Dismiss filed on behalf of respondents and a hearing was scheduled for September 7, 2006. Notice of the Hearing on the Motion to Dismiss was duly mailed to claimant's counsel and to the claimant at his last known address. However, there was no written response to the Motion and the claimant failed to appear at the hearing.

Accordingly, premises considered, it is hereby determined that the Motion 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