

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300460

LEE MCCABE	CLAIMANT
AOG	RESPONDENT
LIBERTY MUTUAL INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 2, 2006

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

Claimant represented by GUNNER DeLAY, Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 31, 2006, in Fort Smith, Arkansas. This hearing was held on the Respondents' Motion to Dismiss any pending claims for additional benefits, without prejudice. A copy of the Respondents' Motion was made Commission's Exhibit No. 1 to the hearing. A copy of the claimant's response thereto was made Commission's Exhibit No. 2. The remainder of the entire file was made Commission's Exhibit No. 3 and incorporated by reference in the transcript of the proceeding.

DISCUSSION

The file in this claim reflects that the claimant injured various portions of his body in a motor vehicle accident on January 6, 2003. These injuries were accepted as compensable by the respondents and various benefits were paid. Subsequently, an Agreed Order providing for the distribution of the proceeds of a

third party claim was entered. On March 14, 2005, a claim was made for additional benefits for permanent disability or impairment and was subsequently amended to request additional benefits for functional disability or loss of wage earning capacity (by letter dated April 13, 2005). A pre-hearing conference was held and the case was ultimately set for hearing on numerous issues (see pre-hearing order of May 11, 2005). However, the hearing was cancelled by mutual request and the parties attempted to work out the disputed benefits.

No subsequent request has been made for a hearing on any of the previously outlined disputed issues. As a result, the respondents filed their Motion to dismiss all of these previous claims for additional benefits for lack of prosecution under Commission Rule 099.13 and Ark. Code Ann. §11-9-702(d). Claimant's attorney has responded by stating that the claimant does not object to such a dismissal, without prejudice to refileing of any of these claims within the time period allotted by Ark. Code Ann. §11-9-702(b). Neither the claimant, nor his attorney, appeared at the hearing on the Motion.

After consideration of the Respondents' Motion, the Claimant's Response, and the various documents contained within the Commission's file, I find that the Respondents' Motion is well taken and should be granted.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On January 6, 2003, the relationship of employee-employer existed between the parties.

3. On January 6, 2003, the claimant sustained compensable injuries to various portions of his body.

4. This claim was accepted as compensable by the respondents. Appropriate workers' compensation benefits have and continue to be paid voluntarily by the respondents.

5. During the course of this claim, the claimant has filed various claims for additional benefits. No request for hearing has been made by the claimant, in regard to any of these previous claims for additional benefits, for over six months prior to the filing of the Respondents' Motion to Dismiss.

6. The claimant has announced that he has no objection to the granting of the Respondents' Motion to Dismiss any pending claims for additional benefits, without prejudice to refiling within the time period allotted by the Act.

7. An Administrative Dismissal without Prejudice of any pending claims for additional benefits in this case is appropriate under the facts of this case and is in accord with the intent of Ark. Code Ann. §11-9-702(d).

#### ORDER

Based upon my foregoing findings and conclusions, I find that the Respondents' Motion to Dismiss any pending claims for additional benefits, without prejudice, should be and hereby is granted. Any pending claims for additional benefits in this case

are dismissed, but may be refiled 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