

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310800

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| JANEE McGAHA, EMPLOYEE | CLAIMANT |
| CRACKER BARREL OLD COUNTRY STORE, EMPLOYER | RESPONDENT |
| ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA | RESPONDENT |

OPINION AND ORDER FILED JULY 31, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on July 27, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear in person. Claimant's attorney, Mr. Thomas W. Mickel, Attorney-at-Law, Conway, Arkansas, appeared at the hearing.

Respondents represented by Mr. Eric Newkirk, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled for July 27, 2006, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702(d) and/or Commission Rule 099.13.

This claim concerns an admitted injury sustained on or about October 6, 2003. Respondents accepted and paid various benefits while controverting benefits beyond those previously paid.

A procedural history of the claim is warranted.

The claimant, by and through her attorney, filed a Commission Form AR-C dated October 13, 2003, claiming a date of injury on October 6, 2003, specifically, burns to her left leg. Respondents promptly filed a Commission Form AR-2, accepting the claim as compensable. Respondents filed a Commission Form AR-4

in February, 2004, reflecting all compensation paid and reporting suspension of further payments. Although respondents' attorney filed a notice of representation on or about March 21, 2005, no further requests were made by the claimant following the initial filing of the claim. On April 24, 2006, respondents filed a Motion to Dismiss the claimant, together with a brief in support of its Motion. The claim was then assigned to an administrative law judge who requested that claimant's attorney respond to respondents' Motion on or before May 22, 2006. Claimant's attorney did not object to the Motion. At respondents' request, a hearing was scheduled for July 27, 2006.

The sole issue at the hearing concerned respondents' Motion to Dismiss the claim.

The claimant failed to appear at the hearing. The claimant's attorney appeared and introduced documentary evidence reflecting that he had advised the claimant of the pending Motion. Respondents appeared and introduced documentary evidence in support of its Motion.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On or about October 13, 2003, the claimant filed a claim for benefits as the result of an October 6, 2003, injury.
3. The claimant has failed to prosecute her claim.
4. Respondents have controverted all benefits beyond those previously paid.

5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(d).

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the record reflects that the claimant has failed and/or refused to prosecute her claim. The claimant has been advised that her failure to respond to prior pleadings, as well as appear at the scheduled hearing would result in the dismissal of her claim. A hearing was scheduled at respondents' request pursuant the decision in *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

After full consideration of the facts, issues, and the law, and with notice of the hearing being sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of this claim if filed within the statutory time limits imposed by Arkansas Law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge