

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F508924 & F600675**

<b>CECIL MILLER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MC ELECTRIC CO., INC., EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>SUMMIT CONSULTING, INC., CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>AMERICAN INTERSTATE INSURANCE, CARRIER</b>	<b>RESPONDENT NO. 2</b>

**OPINION FILED NOVEMBER 21, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on November 17, 2006, at Pine Bluff, Jefferson County, Arkansas.

The unrepresented Claimant failed to appear at the hearing.

Respondents No. 1, represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2, represented by the HONORABLE NORWOOD PHILLIPS, Attorney at Law, El Dorado, Arkansas.

**ISSUES**

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004).

After review of the Commission's file, I find the Motion should be granted.

**STATEMENT OF THE CASE**

The claimant filed a letter on January 9, 2006 requesting mediation with the Legal Advisor Division regarding an August 10, 2005 left arm injury. The respondents declined mediation. The claim was assigned to the Adjudication

Division in February, 2006 and prehearing notices were sent to the parties. The claimant was represented by Keith Wren from March 3, 2006 to May 19, 2006. He was dismissed as attorney of record in an Order filed January 22, 2006 by the Full Commission, and no lien was filed. Medical records dated May 2006, show the claimant was released by Dr. Hudson with no permanent impairment.

In October and September 2006 the respondents filed a Motion to Dismiss for lack of prosecution with a certificate of service to the claimant. To date, there has been no reply to the Motion.

A hearing notice was sent to the claimant by certified mail on October 27, 2006 setting this case for dismissal.

### **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue his case but he has failed to respond to written notices and failed to appear at the scheduled hearing. The claimant has not requested a hearing within the last six months.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 13:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. (Effective March 1, 1982)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Ark. Code Ann §11-9-702 and Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge