

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506629

KEVIN V. MILLER, EMPLOYEE

CLAIMANT

IDEAL CONSTRUCTION COMPANY, EMPLOYER

RESPONDENT

BITUMINOUS CASUALTY COMPANY, CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 12, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on September 8, 2006 at Monticello, Drew County, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE Jarrod Russell, Attorney at Law, Little Rock, 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 an AR-C on June 29, 2005 alleging a lower back injury on June 8, 2005.

A review of the Commission's file shows the claimant was formerly represented by Billy Hubbell. Initially prosecution of the case was delayed when the claimant failed to file a prehearing questionnaire and exhibits. The case was returned to general files on August 22, 2005.

After a prehearing order was issued on February 1, 2006, the case was further delayed when the claimant failed to cooperate with Discovery requests. An Order compelling Discovery was entered against the claimant on March 20, 2006.

The case was set for a hearing on May 12, 2006 on the issue of compensability. Once again the hearing had to be delayed because the claimant failed to fully comply with Discovery requests.

The hearing was ultimately set for August 4, 2006 but was cancelled en route when Mr. Hubbell discovered his client was working out-of-state.

The respondents filed a Motion to Dismiss on August 10, 2006 and Mr. Hubbell withdrew as attorney of record by Order filed August 11, 2006.

_____ On August 10, 2006 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to claimant. To date, there has been no reply to the Motion and the claimant failed to appear at the hearing.

A hearing notice was sent to the claimant by certified mail on August 17, 2006 at his father's residence in Arkansas.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

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 failed to appear at the initial hearing pursuant to Rule 13.

I find the claimant has had adequate time to investigate this claim and respond to the Notices.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge