

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412594

STAN MOONEY

CLAIMANT

**PIERCE CONSTRUCTION, INC.
(UNINSURED)**

RESPONDENT NO. 1

SOUTHERN GUARANTY

RESPONDENT No. 2

ORDER AND OPINION FILED FEBRUARY 8, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondent No. 2 represented by the HONORABLE J. MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held to determine whether the above claim should be dismissed for lack of prosecution. The claimant was notified of the hearing by certified mail and he failed to pick up the certified mail. The notice of the hearing was re-sent by regular mail and no return mail has been received.

The hearing was scheduled on Respondents' Motion to Dismiss for Lack of Prosecution filed on August 23, 2005, pursuant to Rule 13 of the Arkansas Workers' Compensation Commission and Ark. Code Ann. §11-9-702(d). The claimant failed to appear at the hearing.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claimant sustained a compensable injury on August 9, 2003, when he injured his back and right hip when a ladder collapsed, causing him to fall.

Respondents accepted the claim as compensable and paid some temporary total disability benefits and medical benefits. On December 10, 2004, the claimant filed an AR-C Form with the Workers' Compensation Commission and requested additional benefits, to include, temporary total disability, temporary partial disability, permanent partial disability, as well as additional medical benefits and rehabilitation. On January 21, 2005, respondents served Interrogatories and Requests for Production of Documents upon the claimant's attorney and have received no responses. Claimant's attorney, on February 18, 2005, asked to be relieved of counsel and the Commission entered an Order on February 22, 2005, allowing the attorney to withdraw. The claimant has not responded to any requests from the Commission regarding proceeding with his claim.

The respondents filed a motion to dismiss and the hearing notice was mailed on December 12, 2005, in accordance with *Dillard v. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d (9/22/04/CA 04-025).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but 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 dismissal hearing pursuant to Rule 13.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**