

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F409494**

<b>LAQUINTON MOORE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>WESTERN SIZZLIN, EMPLOYER</b>	<b>RESPONDENT</b>
<b>WESTPORT INSURANCE CORPORATION, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JUNE 1, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on May 26, 2006 at Pine Bluff, Jefferson County, Arkansas.

Claimant and her attorney, the HONORABLE GENE MCKISSIC, failed to appear at the hearing.

Respondents represented by the HONORABLE MIKE STILES, 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, \_\_\_ S.W.3d \_\_\_ (2004).

After review of the Commission's file, I find the Motion to Dismiss this claim without prejudice should be granted.

**STATEMENT OF THE CASE**

The claimant filed a letter on October 1, 2004 requesting a hearing alleging facial and dental injuries as a result of a slip and fall on July 28, 2004. The claim was denied by the carrier on the basis of horseplay.

A Legal Advisor conference was conducted on November 3, 2004. The case was then assigned to the Adjudication Division. The case was returned to general files on December 7, 2004 when the claimant failed to file a prehearing questionnaire. Discovery

was initiated by the respondents on December 16, 2004.

The case was returned to the Adjudication Division and a telephone conference was conducted on January 25, 2005. The claimant was given additional time to consult with an attorney. The claimant was also directed to answer the respondents' discovery requests (interrogatories, medical authorization/Commission authorization). Attorney Gene McKissic filed a letter of representation on March 30, 2005.

On August 11, 2005 the respondents filed a Motion to Dismiss for lack of prosecution. Mr. McKissic filed an objection on August 22, 2005 citing health problems and his request for an extension was granted by the Commission's letter of August 24, 2005.

The respondents renewed their Dismissal Motion on December 7, 2005. Mr. McKissic filed a letter on December 20, 2005, indicating he was ready to pursue the claim and would file responses to discovery requests within the next ten days. At the request of the parties, the dismissal hearing was cancelled.

Mr. McKissic missed the Commission's deadline for filing a prehearing questionnaire and the Dismissal Hearing was rescheduled for January 27, 2006. When the claimant filed a prehearing questionnaire and exhibits, the hearing was cancelled.

\_\_\_\_\_By letter dated February 16, 2006, the respondents notified the Commission that the claimant had never answered the Discovery requests so the case had never been properly investigated.

Respondents filed a third Motion to Dismiss this claim on April 13, 2006. To date, the claimant has never responded to the Motion. The case was set for a dismissal hearing by a Notice dated April 17, 2006. The Notice was sent by certified mail to the claimant and his attorney.

The night before the hearing, claimant's counsel faxed the Answers to Interrogatories to the respondents.

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### **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.

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. The claimant's counsel has lost contact with his client.

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge