

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F504739

JOHN MORLAN, EMPLOYEE	CLAIMANT
SOUTHERN REFRIGERATED TRANSPORT, EMPLOYER	RESPONDENT
FIDELITY & GUARANTY INSURANCE COMPANY, CARRIER	RESPONDENT

**OPINION FILED JULY 19, 2006**

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on June 28, 2006, at Texarkana, Miller County, Arkansas.

Pro se Claimant, JOHN MORLAN, did not appear at the hearing.

Respondents represented by HON. CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on June 28, 2006, in Texarkana, Arkansas, to determine whether the above-captioned claim should be dismissed for want of prosecution pursuant to *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, \_\_\_ S.W. 3d \_\_\_ (2004). After a review of the record, Commission's file, and all other matters properly before the Commission, I find this claim shall be dismissed without prejudice for want of prosecution.

The claimant originally filed an AR-C with the Ark. Workers' Compensation Commission on May 8, 2005, alleging injuries due to a truck wreck. (RX-1). The AR-C listed the date of claimant's injuries as March 30, 2005. The claimant first retained Mr. Greg Giles, Attorney, however, Mr. Giles was dismissed as attorney of record on October 24, 2005. (RX-2).

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On November 1, 2005, the respondents filed a Motion to Dismiss for failure to prosecute. Even though the claimant never responded to the November 1, 2005 motion, this Administrative Law Judge denied the motion to give the claimant more time to find another attorney, or pursue his claim pro se. (RX-4) Said order denying respondents' Motion to Dismiss was entered on November 29, 2005.

According to the respondents, efforts were made to communicate with the claimant about the claim, but to no avail. On March 10, 2006, the respondents filed a second motion to dismiss for failure to prosecute. This Administrative Law Judge sent the claimant a copy of the motion with a letter directing the claimant to file a response to the motion within ten (10) business days. (RX-6)

The claimant failed to respond to the second motion to dismiss, and this Administrative Law Judge set a hearing on the motion for June 28, 2006, in Texarkana, AR. Said notice of hearing was sent to the claimant by both certified and regular U. S. Mail. The claimant failed to appear at the June 28, 2006 hearing.

#### **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue his claim, but has failed to prosecute this case. The alleged injury occurred over one year ago, and has had more than adequate time to prepare a case for a determination of compensability. The claimant has failed to file written responses to motions and has failed to comply with directions from the Commission. Further, the claimant has failed to appear at the hearing scheduled in this matter. Based on the claimant's inactions, he is now wholly in default and I find this claim should be dismissed without prejudice for want of prosecution.

There are two provisions for dismissal of claims:

- 1) A.C.A. §11-9-702(a)(4) and;
- 2) Commission Rule 99.13, which states in part:

"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."

I make the following Findings of Fact:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The claimant has failed to adequately prosecute his claim, and pursuant to Commission Rule 99.13, this claim shall be dismissed without prejudice.

I find that the claimant has had adequate time to investigate his claim and that his delay in prosecuting his claim has been unreasonable.

**ORDER**

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Commission Rule 99.13 of the Arkansas Workers Compensation Commission. Respondents' motion for sanctions is hereby taken under advisement should the claimant re-file within the applicable statute of limitations period.

**IT IS SO ORDERED.**

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S. DALE DOUTHIT  
Administrative Law Judge