

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403922

GARY W. POWELL

CLAIMANT

UNITED PARCEL SERVICE, INC.

RESPONDENT EMPLOYER

LIBERTY MUTUAL FIRE INSURANCE

RESPONDENT CARRIER

ORDER AND OPINION FILED JULY 18, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on June 14, 2006, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear. The notice sent by regular mail was returned to my office. The claimant has been represented by attorney, Philip M. Wilson, and he also was not present. Before the hearing, Mr. Wilson advised the Commission that he has been unable to locate the claimant.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed August 12, 2005, and again on April 27, 2006, pursuant to Rule 13 of the Commission. Certificates of service were sent to the claimant.

After a 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 back injury on February 5, 2004, which was accepted as a "medical only" claim. On April 21, 2004, the claimant's counsel filed a Form AR-C with the Commission requesting a hearing but not identifying any benefits being sought. On July 20, 2004, a Change of Physician Order was entered by the Commission. Respondents contend all appropriate medical and other benefits have been paid. Respondents further contend the claim is more than two years old and it has been longer than one year since benefits were last paid.

Respondents filed a Motion to Dismiss and the hearing notice was mailed on May 19, 2006, 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 with prejudice for failure to prosecute pursuant to Rule 13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**