

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410329

ANITA Y. REVERAND, EMPLOYEE CLAIMANT

AREA AGENCY ON AGING, EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER RESPONDENT

OPINION FILED MAY 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 9, 2006 at Little Rock, Pulaski County, Arkansas.

Claimant, pro se, failed to appear at the hearing.

Respondents represented by the HONORABLE BETTY J. DEMORY, 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 should be granted.

STATEMENT OF THE CASE

The claimant filed a hearing request on November 18, 2004, alleging lumbar pain after backing up a van and hitting a pole on September 20, 2004. The claim has been controverted in its entirety. The claimant did not respond to the Discovery Requests, delaying investigation of the claim.

In June, 2005, the respondents filed a Motion to Dismiss. The claimant objected and a prehearing conference was held on September 27, 2005. The

claimant was directed to answer interrogatories and sign a medical release. A second telephone conference was held in January, 2006 and the case was set for a May 19, 2006 hearing on the merits of the case. The case was scheduled to accommodate the claimant as she had moved out-of-state. To date, the hearing notices have not been returned to the Commission and the claimant did not call the Commission to request a continuance.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her case but she 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