

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E809294

EVA ROGERS, EMPLOYEE **CLAIMANT**

**WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER** **RESPONDENT**

**CLAIMS MANAGEMENT, INC. (TPA),
INSURANCE CARRIER** **RESPONDENT**

OPINION AND ORDER OF DISMISSAL FILED OCTOBER 17, 2006

This matter comes before the Commission on the respondents' Motion to Dismiss for Want of Prosecution. The claimant sustained a compensable injury to her low back and left lower extremity in the scope and course of her employment with the respondent employer on or about July 17, 1998, a claim which respondents accepted and paid benefits. The claimant filed a claim for workers' compensation benefits for her July 17, 1998 injury, on July 14, 1999, by the filing of an AR-C for benefits. A dispute arose in 1999 as to whether or not a referral by the treating physician was permissible, prompting the claimant to request a hearing in this matter on August 11, 1999, for additional benefits. A hearing on this issue was set for October 18, 1999, but was subsequently cancelled at the parties' request as the issue had been resolved. An additional dispute arose in 2000, regarding the payment of medical expenses, again prompting the claimant to request a hearing in this matter on January 25, 2000, for additional benefits. A hearing on this issue was not scheduled as the issue was later resolved. A dispute arose as to the compensability of a right leg injury, and the claim was set for a prehearing telephone conference held on January 29, 2001, though a hearing was again not set and the

claim was returned to general files. A dispute arose in 2002, regarding the necessity of additional medical treatment, again prompting the claimant to request a hearing in this matter on January 31, 2002, for additional benefits. A prehearing telephone conference on the issue of additional benefits was held on April 29, 2002, though a hearing was not set at the parties' request as the issue had been resolved and the claim was returned to general files. A dispute arose in 2003 regarding the necessity of additional medical treatment, again prompting the claimant to request a hearing in this matter. The issue was subsequently resolved, the prehearing telephone conference on the issue was cancelled at the parties' request and the claim was again returned to general files. The claimant sought a change of physician on March 24, 2005, pursuant to Ark. Code Ann. § 11-9-514(a)(3), and the claimant was granted her change of physician on May 2, 2005. The claimant's counsel requested and was relieved as counsel for the claimant in an Order dated May 16, 2006. Since the claimant was granted her change of physician, she has not taken any further steps toward the prosecution of her claim. Respondents filed a Motion to Dismiss for Want of Prosecution on August 10, 2006. The Commission gave notice of the motion to the claimant by letter dated August 18, 2006, sent via certified mail and first-class mail. The letter was received by claimant as evidenced by the certified mail return receipt signed by the claimant dated August 29, 2006. The claimant was warned therein that failure to respond may result in a dismissal of her claim. No response thereto has been received from the claimant. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail on September 14, 2006, and received by claimant, as

evidenced by the certified mail return receipt signed by the claimant dated September 15, 2006. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant failed to appear at the hearing scheduled on October 12, 2006. The claimant has filed no request for hearing within the last six (6) months.

Commission Rule 13 provides in relevant part as follows:

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge