

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507912

GILFORD SANDERS

CLAIMANT

OZARK WAFFLES

RESPONDENT

WAUSAU INSURANCE COMPANY,
INSURANCE CARRIER

OPINION FILED AUGUST 4, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant not represented by counsel.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort
Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 1,
2006, in Fort Smith, Arkansas. The purpose of the hearing was the
respondents' Motion to Dismiss this claim for lack of prosecution.

No response was made to this Motion by the claimant. The
claimant did not appear in person or by counsel at the scheduled
hearing.

DISCUSSION

_____This case has been, since its inception, controverted in its
entirety by the respondents who have consistently denied the
occurrence of a compensable injury to the claimant's low back on or
about July 15, 2004. The claim was initially filed on August 1,
2005, and a hearing was requested by claimant's attorney.

_____A pre-hearing conference was held in this case and the matter
was set for full hearing on December 27, 2005. A copy of the pre-
hearing order with the hearing date given was sent to the claimant
(as well as his attorney) certified mail return receipt requested.

This copy was returned by the U. S. Post Office as “unclaimed.”

On December 21, 2005, the claimant’s attorney requested and received a cancellation of the scheduled hearing. He was advised that this matter would not be reset until requested.

On May 12, 2006, the claimant’s attorney, Mr. Mike Hamby, requested that he be granted leave to withdraw as claimant’s attorney of record, giving as his reason that his client had left the state and that the available medical evidence did not support the claimant’s contentions. No objection was made by the claimant. Mr. Hamby was given leave to withdraw on May 23, 2006, and the claimant was properly advised of this fact.

After consideration of the respondents’ Motion, the claimant’s failure to respond thereto, the claimant’s failure to appear at the hearing on this Motion, and the claimant’s failure to take any action to pursue his claim since December of 2005, I find the respondents’ Motion well taken.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers’ Compensation Commission has jurisdiction of this claim.
2. On or about July 15, 2004, the relationship of employee-employer-carrier existed between the parties.
3. The respondents have consistently denied the occurrence of a compensable injury to the claimant’s low back, on or about July 15, 2004, and have controverted this claim in its entirety.
4. The claimant has failed to diligently pursue his claim.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to grant the respondents' Motion.

Therefore, this case is dismissed in its entirety, pursuant to Rule 13 of the Commission. However, this dismissal is subject to refiling within the period allowed by Ark. Code Ann. §11-9-702(a).

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge