

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F400092

RAMONE SANDERS, EMPLOYEE	CLAIMANT
US SECURITY ASSOCIATES, INC., EMPLOYER	RESPONDENT
TRANSCONTINENTAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 30, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on March 9, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. THOMAS MICKEL, Attorney at Law, Conway, Arkansas.

Respondents represented by HON. FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on March 9, 2006, in Little Rock, 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 November 11, 2003, alleging lung injuries due to exposure to fire extinguisher fumes. The AR-C listed the date of claimant's lung injury as March 5, 2003. The claimant's attorney, Mr. Tom Mickel, first requested a full hearing in this claim on February 1, 2005.

Sanders, Ramone/F400092

Subsequently, a prehearing conference was conducted on April 6, 2005, and a full hearing was set for May 26, 2005, in Little Rock, Arkansas.

On May 23, 2005, claimant's attorney requested a continuance of the full hearing, stating a need for his client to gather more medical evidence. Over the respondents' objection, this Administrative Law Judge granted the claimant's request for a continuance by Order dated May 25, 2005. On November 2, 2005, the respondents filed a motion to dismiss for failure to prosecute. On November 18, 2005, the claimant's attorney responded to the motion, objecting to the dismissal and listing the fact that the claimant resides in the State of Washington as basis for the delay in prosecuting the claim.

On November 29, 2005, this ALJ gave the claimant the benefit of the doubt and denied the respondents' motion to dismiss, but ordered the parties to complete another prehearing questionnaire, or advise this ALJ if they wished to rely on their previous responses within fifteen (15) days of the November 29, 2005, order. (CX-1)

The claimant failed to abide by the Commission's 11/29/05 order, and the file was returned to the Commission's general files.

Respondents again brought a motion to dismiss for failure to prosecute on January 5, 2006, (CX-2), and again claimant's attorney objected citing a need for his client to find a specialist in Washington State.

This ALJ then set this matter for a hearing on respondents' motion to dismiss for March 9, 2006, at 3:30 p.m. The respondent and claimant's attorney appeared at the March 9, 2006 hearing; however, the claimant failed to appear.

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 three years ago, and three years is more than adequate time to prepare a case for a determination of compensability. Furthermore, the claimant had a full hearing scheduled in May of 2005, but requested a continuance three days before the hearing to obtain more medical evidence. It has been one year since claimant first requested more time to gather medical evidence and, to date, still has not gotten his case together. I find this claim shall be dismissed without prejudice for want of prosecution. It must be noted that at the time of the hearing on the motion March 9, 2006, claimant's attorney still did not know the claimant's status on gathering the medical evidence he has stated he needs.

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.

Sanders, Ramone/F400092

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.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge