

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F408617

ROBIN SANDERS, EMPLOYEE

CLAIMANT

**LENNOX INDUSTRIES, INC.,
EMPLOYER**

RESPONDENT

**ACE AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JANUARY 6, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on December 1, 2005, Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on December 1, 2005, to determine whether the above-referenced claim should be dismissed for claimant's non-compliance with discovery and want of prosecution pursuant to Rule 13 of the Rules of the Arkansas Workers' Compensation Commission.

The hearing was scheduled on respondents' Motion to Dismiss filed September 12, 2005, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant. Claimant filed no written response to respondents' motion but did contact the Commission on several occasions after the motion to dismiss was

filed, informing the Commission that she would be present for the hearing on the motion. On November 15, 2005, claimant filed a second Form AR-C, as well as a *pro se* request for a “second opinion.” Claimant appeared for the hearing on December 1, 2005, to contest the motion to dismiss.

After review of the file and evidence presented in this case, including the testimony of the claimant at the hearing, I find that respondents’ motion should, at this time, be denied.

STATEMENT OF THE CASE

This claim stems from an incident that occurred on April 28, 2004, when claimant sustained an admittedly compensable injury. Respondents assert that the claim was accepted and benefits were paid. Respondents further assert that the claimant was released as being at maximum medical improvement with a 0 percent impairment rating on March 7, 2005.

On March 16, 2005, claimant filed with the Commission a *pro se* request for a change of physician. A change of physician order was entered by the Commission on March 31, 2005, changing claimant’s physician from Dr. Sprinkle to Dr. Ward. Respondents assert that they paid for claimant’s initial visit with Dr. Ward, as required, but that they then controverted claimant’s entitlement to additional treatment. Claimant then filed a request for a hearing on May 11, 2005.

Respondents assert that they propounded interrogatories to claimant on July 7, 2005, and sent a reminder letter on August 18, 2005; however, claimant has not responded with answers to the interrogatories. Further, the Commission sent claimant a PreHearing Questionnaire on July 19, 2005, which indicated her answers to the questionnaire would be due on August 8, 2005. As of the time of the hearing, on December 1, 2005, claimant had not filed any responses to the PreHearing Questionnaire. With no further activity, the case was returned to open general files on August 25, 2005.

On September 12, 2005, respondents filed a Motion to Dismiss for Want of Prosecution. On September 16, 2005, claimant was sent by mail a letter from the Commission, informing her of respondents' motion to dismiss for want of prosecution and that if she objected to her case being dismissed, she should contact the Commission within twenty days of receipt of that letter. Claimant filed nothing with the Commission until November 15, 2005, at which time she filed a Form AR-C request for additional benefits, as well as a *pro se* letter requesting a "second opinion."

Claimant admitted that she had received the interrogatories propounded to her by respondents and that she had received the PreHearing Questionnaire sent by the Commission but asserted that she did not respond to them because she did not understand what to do, exactly. She testified that she did answer them the best she

could but that she had never mailed them back. She thought, although the instructions for both said to return them by mail, that she simply needed to bring them with her to the full hearing on the merits of her claim.

However, upon understanding that discovery is part of the process that must be completed in order for her claim to be heard, and desiring that her claim not be dismissed, claimant testified that she would agree to answer the interrogatories propounded by respondents, as well as the PreHearing Questionnaire. Claimant also requested a hearing. She testified that she now understands that she must file responses to the PreHearing Questionnaire and must comply with discovery in order to move her case forward. She requests that respondents' motion to dismiss be denied. Notably, claimant filed responses to the PreHearing Questionnaire immediately following the hearing on the motion to dismiss.

FINDINGS OF FACT

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. On March 16, 2005, claimant filed with the Commission a *pro se* request for a change of physician;
3. A change of physician order was entered by the Commission on March 31, 2005, changing claimant's physician from Dr. Sprinkle to Dr. Ward, and respondents paid for the initial visit to Dr. Ward;

4. Claimant filed a request for hearing on May 11, 2005;
5. Claimant was sent a PreHearing Questionnaire that she failed to file responses to;
6. Although given ample time to do so, claimant failed to comply with discovery attempts made by respondents, pursuant to Rule 16 of the Commission;
7. On September 12, 2005, respondents filed a Motion to Dismiss;
8. Claimant failed to file a written response to respondents' motion to dismiss;
9. The claimant did appear at the scheduled hearing on the motion on December 1, 2005, to request that her case not be dismissed;
10. The claimant agreed to answer interrogatories propounded by respondents, as well as the PreHearing Questionnaire; claimant did file responses to the questionnaire immediately following the hearing;
11. Respondents' motion to dismiss is denied at this time

DISCUSSION

A review of the file, evidence, and testimony of the claimant shows that claimant failed to respond to the PreHearing Questionnaire sent to her by the Commission on July 19, 2005, and failed to comply with discovery; however, she did appear at the scheduled hearing and indicates a willingness to pursue her claim and

cooperate with discovery. Further, she filed her responses to the PreHearing Questionnaire immediately following the hearing.

Rule 13 of the Rules of the Arkansas Workers' Compensation Commission states, in 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. (Effective March 1, 1982.)

[Emphasis added.]

Because of claimant's appearance at the hearing on the motion to dismiss and her indication that she wishes to pursue her claim, that she simply did not understand the process, and that she will now cooperate with moving her case forward, respondents' motion to dismiss this case for failure to prosecute pursuant to Rule 13 is denied at this time.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge

