

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D903015

JOHN SCHOCK, EMPLOYEE

CLAIMANT

HERITAGE PUBLISHING CO., INC., EMPLOYER

RESPONDENT

INDEMNITY INS. CO. OF NORTH AMERICA, CARRIER

RESPONDENT

OPINION FILED JULY 13, 2006

Hearing before Administrative Law Judge J. Mark White on June 13, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James Stanley, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 13, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on May 8, 2006, and a Prehearing Order was entered that same day. A copy of the May 8, 2006, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including February 15, 1989; that on February 15, 1989, the claimant sustained a compensable injury; that the claimant is now permanently totally disabled; and that the Death & Permanent Total Disability Trust Fund is now making the claimant's indemnity payments.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional medical treatment; whether this claim is barred by the statute of limitations; and controversion and attorney's fees.

The claimant contends that he is entitled to additional medical treatment.

The respondents contend that this claim for additional medical benefits is barred by the statute of limitations set forth at Ark. Code Ann. § 11-9-702; that specifically, respondents last paid for medical treatment of any kind in connection with the claimant's injury on February 9, 2004, the day in which Dr. Meadors last saw the claimant and terminated her relationship with him due to his non-compliance and narcotic abuse; that although the claimant was seen for an independent medical evaluation paid for by the respondents on December 12, 2005, prior case law interpreting the old Act has held that an examination alone does not constitute "furnishing of medical services" as required by Ark. Code Ann. § 11-9-702, see *Wilson v. Border Queen Kitchen Cabinet Co.*, 221 Ark. 580, 254 S.W.2d 682 (1953), and *Spencer v. Stone Container Corp.*, 2000 WL 287515 (AWCC Opinion filed

February 24, 2005); that additional medical treatment is no longer reasonably necessary in connection with the claimant's compensable injury, as indicated by both Dr. Meadors and Dr. Thomas Ward; and that any and all problems which the claimant may currently be experiencing are not traceable to the work environment and are instead as a result of the aging process and/or factors which are not connected to the work incident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prosecute his claim
4. This claim should be, and hereby is, dismissed without prejudice pursuant to Commission Rule 099.13.

DISCUSSION

This matter was scheduled for a full hearing to occur on June 13, 2006. The date of the hearing was determined with the consent of the parties during a telephone prehearing conference held May 8, 2006. Notice of the hearing was provided to the claimant's attorney by certified mail. The claimant's attorney appeared at the scheduled June 13, 2006, hearing, but the claimant did not appear. The claimant did not notify the Commission he would be absent, and the claimant's attorney represented he had informed the claimant of the hearing, and that the claimant had not contacted him to cancel or reschedule the hearing.

It was agreed between the parties that the claimant would be given thirty days in which to explain the reason for his absence. If the claimant were to produce a valid excuse, this matter would be decided on the basis of the medical records and deposition transcript submitted by the parties at the hearing. If the claimant were to fail to produce a valid excuse, a decision would instead be rendered on the respondents' motion to dismiss.

On June 19, the claimant's attorney wrote the following to the Commission:

Mr. Schock called and advised me he was ill and unable to attend the hearing. I suggest this is a good cause for his non-attendance.

No further communication has been received from the claimant or his

attorney.

Commission Rule 099.13 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.

The claimant asserts that he was “ill and unable to attend the hearing.” The claimant has not identified this illness. The claimant has not explained why this illness precluded him from providing advance notice to the Commission and/or his attorney of his inability to attend the hearing. The claimant’s negligent failure to provide such notice resulted in lost time and expense for the Commission and for the attorneys involved. I cannot find a vague excuse of “illness” to be a valid excuse for the claimant’s failure to attend the hearing or provide notice of his absence.

Therefore, I find that the claimant has failed to prosecute his claim, and that this claim should be, and hereby is, dismissed without prejudice pursuant to Commission Rule 99.13.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge