

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401813

JACKIE R. SHEARD, EMPLOYEE	CLAIMANT
SOUTHERN HARDWARE COMPANY, INC., EMPLOYER	RESPONDENT
ZENITH INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED MAY 8, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 6, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear either in person or by his attorney, Mr. André K. Valley, Attorney-at-Law, Helena, Arkansas.

Respondents represented by Ms. Emily A. Neal, Roberts Law Firm, Attorneys-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on April 6, 2006, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 13.

The immediate claim concerns an alleged accident and injury occurring on or about January 10, 2003. Respondents have controverted the claim in its entirety, maintaining that the claimant did not sustain a compensable injury arising out of and during the course of his employment with Southern Hardware Company, Inc.

This claim has a extremely unusual procedural history. A summary of the procedural history is warranted. The claimant, by and through his attorney, André K. Valley, filed a Commission Form AR-C on March 5, 2004, alleging an injury to the

right knee as the result of a specific incident identifiable in time and place of occurrence on or about January 10, 2003. By letter dated March 8, 2004, the Commission's Director of Operations sent the claim form to the respondent insurance carrier with instructions to investigate and state its position within fifteen (15) days. In response, respondents notified the Commission that it was controverting the claim in its entirety. No further action was taken by the claimant. The carrier, by letter dated December 8, 2004, requested that the claim be dismissed for lack of prosecution pursuant to Ark. Code Ann. §11-9-702. After notification of the respondents' Motion, claimant's attorney objected to the dismissal and advised that the claimant would promptly request a hearing on the merits of his claim. No further action was taken by the parties until a Joint Petition for final settlement was filed on September 7, 2005. The Petition was not signed by any party. However, the claim was assigned to the adjudication division to consider the Joint Petition filed of record. The claim was assigned to Administrative Law Judge Cynthia Rogers to consider the proposed Joint Petition. However, by letter dated October 3, 2005, respondent advised that it had learned through claimant's attorney that there was an outstanding Medicaid lien. The parties requested that the matter not be set for a hearing pending resolution of any potential liens. By letter dated October 5, 2005, the administrative law judge requested that the parties advise her office when the matter was ready to be scheduled for a Joint Petition hearing. Next, on January 13, 2006, respondents filed a Motion to Dismiss the claim for want of prosecution, together with a brief in support of its Motion. By letter dated January 19, 2006, sent

Certified Mail, return receipt requested, the administrative law judge gave the claimant's attorney twenty (20) days to respond to the Motion. She advised that failure to respond would result in the dismissal of the claim. Thereafter, by letter and notice dated February 27, 2006, the administrative law judge scheduled a hearing for Thursday, April 6, 2006. The subject of the hearing concerned respondents' Motion to Dismiss. Again, the notice was sent both Certified Mail, return receipt requested, as well as First-Class Mail.

The hearing was conducted April 6, 2006. The claimant failed to appear either in person or through his attorney, André Valley. Respondents were represented by its attorney, Emily A. Neal. Documentary evidence was introduced in support of the Motion which included return receipts of the hearing notice. Judge Rogers is no longer employed by the Commission. A letter was sent to the parties on April 19, 2006, advising that the claim would be reassigned to another administrative law judge, and that a decision would be rendered on the existing record, unless objection was received by either party within ten (10) days requesting a new hearing for good cause stated.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On March 5, 2004, the claimant filed a claim for benefits alleging a January 10, 2003, injury.

3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702(a)(4).

#### DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim and the documentary evidence introduced reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to prior notices, as well as to appear at the scheduled hearing would result in the dismissal of his claim. A hearing was scheduled at respondents' request pursuant to the recent decision in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, \_\_\_\_ S.W.3d \_\_\_\_ (September 22, 2004).

After full consideration of the facts, issues, and the law, and with notice of the hearing having been sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice pursuant to Ark. Code Ann. §11-9-702(a)(4).

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge