

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505747

CONLEY J. SOLIDA, EMPLOYEE

CLAIMANT

FLYNCO, INC., EMPLOYER

RESPONDENT

**TRAVELERS INDEMNITY CO. OF CT
C/O ST. PAUL TRAVELERS, CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE
FILED APRIL 18, 2006

This matter comes before the Commission on the respondents' Motion to Dismiss, filed February 23, 2006. A hearing on the Motion was conducted on April 18, 2006 in Little Rock, Pulaski County, Arkansas. The claimant and his counsel, Philip Wilson, did not appear. The respondents were represented by Mr. Guy Alton Wade, Attorney at Law, of Little Rock, Arkansas. At the hearing, the Respondents moved for dismissal of the case due to the nonappearance of claimant and the failure of claimant to abide by an Order of this Commission. The record in this case consists of a transcript of the hearing conducted on April 18, 2006 and Respondents' Exhibit 1. Based on the evidence, I find that:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Notice of hearing was mailed to the claimant and his attorney on March 22, 2006 by certified mail, return receipt requested.
3. The certified return receipt evidencing delivery to the claimant was signed on March 23, 2006 by A. Solida.
4. Claimant and his attorney failed to appear for the hearing despite actual notice of the time, date, and place thereof.
5. Claimant filed a claim for compensation on January 7, 2005, which has been pending for over six (6) months with no bonafide request for hearing.

6. Claimant failed to comply with the March 20, 2006 Order Compelling Discovery.

Rule 99.13 of the Rules of the Arkansas Workers' Compensation Commission provides, in pertinent part:

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

Ark. Code Ann. § 11-9-702(a)(4) provides that upon motion and hearing, that the claim may be dismissed without prejudice if no bonafide request for hearing has been made within six (6) months of the filing of the claim. In the instant case, there has been no request for hearing since the claim was filed over a year ago. In addition, claimant has failed to comply with an Order entered March 20, 2006, compelling claimant to respond to written discovery. Claimant was advised that failure to comply and/or appear at the hearing could result in dismissal of his claim. I find that claimant's failure to comply with a discovery order and failure to appear at this hearing warrants dismissal of his claim. Loosey v. Osmose Wood Preserving Co., 23 Ark. App. 137, 744 S.W.2d 402 (1988).

Therefore, I find that Respondents' Motion to Dismiss should be, and hereby is, granted without prejudice to refile within the appropriate statute of limitations time period.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge

