

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505956

TONY SPIVEY, EMPLOYEE	CLAIMANT
VIRCO MANUFACTURING CORPORATION, EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED JULY 31, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on July 27, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, failed to appear.

Respondents represented by Mr. Michael C. Stiles, Rieves, Rubens & Mayton, Attorneys-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled on July 27, 2006, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

The immediate claim concerns an alleged accident and injury occurring on or about May 25, 2005. Respondents have controverted the claim in its entirety, maintaining that the alleged injury did not arise out of and in the course of the claimant's employment, contending that there was no medical evidence to support a work-related injury.

A procedural history of the claim is warranted. The claimant, *pro se*, requested a hearing on October 19, 2005. The claim was assigned to the Legal Advisor Division for a legal advisor conference and/or mediation conference. Following failed attempts to schedule a legal advisor conference or mediation conference, the Legal Advisor

Division requested that the Clerk reassign the claim to the Adjudication Division. The claim was assigned to an Administrative Law Judge. Prehearing Questionnaires were sent to both parties on December 5, 2005. On January 11, 2006, the claim was returned to the Commission's general files because of the claimant's failure to respond to the Prehearing Questionnaire. On May 4, 2006, respondents filed a Motion to Dismiss the claim without prejudice, together with a brief in support of its Motion. By letter dated May 10, 2006, the Administrative Law Judge requested that the claimant respond to the pending Motion no later than May 31, 2006. The claimant was advised that failure to respond would result in an Order of Dismissal being entered. The claimant failed to respond. At respondents' request, a Notice of Hearing on the Motion was sent June 14, 2006, scheduling a hearing for July 27, 2006. The claimant failed to appear at the scheduled hearing. In view of the foregoing, 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 October 19, 2005, the claimant requested a hearing for an injury allegedly sustained on May 25, 2005, while employed with Virco Manufacturing Corporation in Conway, Arkansas.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4)

and Commission Rule 099.13.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the record reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to various pleadings, object to the Motion to Dismiss, 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 a recent decision, *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

After a full consideration of the facts, issues, and the law, and with notice of the Motion being sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of this claim if filed within the statutory time limits imposed by Arkansas Law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge