

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304031

MARK SWATSENBERG

CLAIMANT

WAL MART STORES, INC.  
CLAIMS MANAGEMENT, TPA

RESPONDENT

OPINION FILED MARCH 2, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in  
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville,  
Arkansas.

Respondent represented by CURTIS NEBBEN, Attorney, Fayetteville,  
Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondent's Motion to Dismiss on February 27, 2006 in Springdale, Arkansas. Although the claimant filed no response to the Motion, he appeared at the hearing through legal counsel and objected to the granting of the Motion. A copy of the Respondent's Motion was made Commission's Exhibit No. 1. The remainder of the Commission's file was also admitted and incorporated by reference into the record.

DISCUSSION

\_\_\_\_\_The statements of claimant's counsel and the Commission's file clearly indicate that the claimant is making a bona fide attempt to pursue his claim. Since September of 2005, he has been actively seeking to obtain a change of physicians and additional medical treatment. The delay that has resulted appears to in no way be the fault of the claimant.

\_\_\_\_\_I am concerned that there appears to have been some delay on the claimant's change of physicians because the file was in the

office here on the Respondent's Motion to Dismiss. There also appears to be documents directed to the Commission that may not have made it to the file. However, all of this could have been avoided had a prompt response have been filed to the Respondent's Motion that set out these matters.

ORDER

For the reasons heretofore set out in this Opinion, I find the Respondent's Motion to Dismiss should be and hereby is denied.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge