

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501405

SHERRY A. TORRES, EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED FEBRUARY 15, 2006

Hearing held on November 22, 2005, at Texarkana, Miller County, Arkansas, before the HONORABLE DALE DOUTHIT, Administrative Law Judge.

Claimant, SHERRY A. TORRES, of Wickes, Arkansas, appeared pro se.

Respondents represented by HON. BUDDY CHADICK, Attorney at Law, of Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 22, 2005, to determine whether the above-captioned claim should be dismissed for want of prosecution pursuant to Rule 99.13 of the Rules of the Arkansas Workers' Compensation Commission, as well as Ark. Code. Ann. §11-9-702(d).

The hearing was scheduled on respondents' Motion to Dismiss filed August 19, 2005, which contained a certificate of service upon the claimant. Claimant filed no written response to the respondents' motion, but did appear at the hearing on the Motion to Dismiss on November 22, 2005.

DISCUSSION

The Commission file reflects the claimant filed her Form AR-C claim for compensation on February 8, 2005 alleging an injury to her wrist that occurred on February 4,

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2005. The Honorable Curtis Nebben then entered his appearance for the respondents by letter dated February 23, 2005. Thereafter, Mr. Nebben announced his client's intent to controvert the claim in its entirety.

On April 15, 2005, the claimant requested, in writing, a hearing before the Commission Administrative Law Judge. (CX-1) On May 20, 2005, this Administrative Law Judge sent the claimant a prehearing notice and questionnaire. The prehearing notice advised the claimant she had twenty (20) days to submit her prehearing response to the questionnaire or the claim would be sent back to general files. The claimant never filed a prehearing response and on July 6, 2005, this Administrative Law Judge sent the claimant a letter advising her that due to her failure to respond to the prehearing questionnaire, this claim was being returned to the Commission's general files. (CX-2) The claimant testified at the hearing she received the Administrative Law Judge's July 6, 2005, letter. (T. pg.9, lns 17-25 & pg. 10, lns 1-5)

The claim was sent back to general files, and on August 17, 2005, respondents filed a Motion to Dismiss due to the claimant's failure to prosecute her case. Claimant failed to respond to the Motion to Dismiss but did appear at the hearing on the Motion to Dismiss.

At the hearing the claimant first testified she did not know whether she agreed with the Motion to Dismiss or not. Ultimately the claimant did request more time to find an attorney.

Q. Ma'am, today for our record, do you have any response to this Motion to Dismiss? What is your position on whether or not this claim should be dismissed at this time.

A. I don't know.

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Q. You don't know?

A. I guess dismiss because I don't have somebody representing me.

Q. Do you understand that under Arkansas Workers' Compensation law, you can find an attorney and that attorney cannot charge you any attorney's fees unless he or she actually recovers indemnity benefits for you?

A. Uh-huh. Yes.

Q. You do understand that?

A. Yes.

Q. Have you looked into retaining an attorney?

A. Well, there in DeQueen and nobody wanted to mess with Workers' Comp.

Q. Okay. Do you - are you requesting more time to find an attorney?

A. Yes.

A review of the evidence does show the claimant has failed to request a hearing within six months after this ALJ returned her claim to general files (July 6, 2005); however, she did appear at the full hearing and expressed a willingness to seek counsel and pursue her claim.

It must be noted that the respondents alleged in their Motion to Dismiss in paragraph 2 that "the claimant has failed to request a hearing." That statement was not correct as Commission Exhibit 1 shows. Even though respondents' Motion to Dismiss is factually incorrect, A.C.A. §11-9-702(d) and Commission Rule 99.13 authorize this ALJ to dismiss this claim for want of prosecution.

This ALJ will give the claimant an opportunity to pursue counsel as she requested at

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the hearing. Because of her appearance at the hearing, and assertion she wishes more time to seek counsel, I will deny the respondents' Motion to Dismiss at this time. However, should the claimant fail to obtain counsel, or pursue this claim pro se within six months from the date of this order, this ALJ will entertain subsequent motions to dismiss for failure to prosecute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the witness and to observe her demeanor, and without giving the benefit of the doubt to either party, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- _____ 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) On February 8, 2005, the claimant filed a Form AR-C seeking benefits for her alleged wrist injury of February 4, 2004.
- _____ 3) The claimant requested a full hearing by letter dated April 15, 2005.
- 4) The claimant failed to respond to Commission Prehearing requests and the claim was returned to general files on July 6, 2005.
- 5) On August 17, 2005 respondents filed a Motion to Dismiss for lack of prosecution.
- 6) Claimant failed to file a written response to respondents

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Motion to Dismiss.

7) The claimant did appear, pro se, at the scheduled hearing on the motion on November 22, 2005, and requested time to seek counsel.

8) Respondents' motion is denied at this time.

ORDER

Based on the Findings of Fact recited herein, the respondents' Motion to Dismiss filed August 19, 2005 is hereby denied and the claim is to return to the Commission's general files.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

rb