

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408489

JANET UPSHAW	CLAIMANT
LABARGE, INC.	RESPONDENT
HARTFORD INSURANCE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 10, 2006

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

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

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on August 7, 2006, in Springdale, Arkansas, on the respondent's Motion to Dismiss the claim numbered F408489 for lack of prosecution. No one appeared on behalf of either party, not did the claimant appear personally.

DISCUSSION

\_\_\_\_Notice of this hearing was sent to and received by both the claimant and her attorney.

The claimant's attorney responded to the respondent's Motion, stating she had been unable to contact the claimant and requested additional time to do so. The hearing was set on a date that allowed the requested time. Claimant's attorney subsequently advised that she was still unable to contact the claimant and did not object to a dismissal without prejudice.

Notice of this hearing was also sent directly to the claimant at her last known address. The U. S. Post Office's receipt shows

that the claimant personally accepted and acknowledged receipt of the notice. This notice was received by the claimant in sufficient time prior to the hearing to allow her to respond to the Motion and/or appear at the hearing, if she desired to do so.

A review of the file for claim number F408489 reflects that a previous request for a hearing had been made and a prehearing conference had been held. At the prehearing conference it was mutually recognized that the actual dispute between the parties involved benefits for an alleged cumulative trauma injury in the form of carpal tunnel syndrome. However, claim number F408489 also involved an admittedly compensable injury in the form of a chemical burn to the thumb and several fingers of the claimant's right hand that resulted from a specific accident or incident on June 10, 2004. The parties acknowledged that there were no disputed benefits currently owing in regard to this chemical burn and that all appropriate benefits for this injury had or were being paid.

By agreement of the parties and due to the fact that the real dispute involved an injury to an entirely separate part of the claimant's body, an entirely different mechanism of injury, and a separate date of injury, it was determined that claim number F408489 should be limited to the chemical burn and a new file would be established for the disputed carpal tunnel syndrome. Claim number F408489 was to be returned to the inactive files. Apparently, claim number F411621 was established for the disputed carpal tunnel syndrome. As the respondent's present Motion was only directed toward claim number F408489, only this particular

claim will be addressed in this Opinion.

After consideration of the respondent's Motion, the claimant's lack of response, her lack of further action on this claim, and her failure to appear, I find that the respondent's Motion is well taken and should be granted. While the claimant's inaction may be due to the fact that no additional benefits are currently being claimed for the chemical burn of June 10, 2004 (which is the subject matter of F408489), this makes no significant difference. Even if the claimant's inaction is justified or appropriate, it still represents proper grounds to dismiss any "pending" claim for additional benefits in claim number F408489.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has either failed to diligently prosecute any claim for additional benefits she may have in this case or there are no additional benefits owed at this time. Either of these situations would justify the dismissal of any "pending" claim for additional benefits in this particular case.

ORDER

Any pending claims for additional benefits in this particular case (i.e. F408489) should be and hereby are dismissed for the reasons heretofore set out in this Opinion. This dismissal is without prejudice to refile within the time allowed by Ark. Code Ann. §11-9-702(b).

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IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge