

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501092

RENEE E. VILELLA, EMPLOYEE	CLAIMANT
CRACKER BARREL OLD COUNTRY STORE, EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, INSURANCE CARRIER; GALLAGHER BASSETT SERVICES, INC., TPA	RESPONDENT

ORDER OF DISMISSAL FILED MARCH 14, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on March 10, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant failed to appear.

Respondents represented by Mr. Eric Newkirk, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was scheduled on March 10, 2006, to determine whether this claim should be dismissed for want of prosecution to Ark. Code Ann. §11-9-702 and Commission Rule 13.

The immediate claim concerns an alleged accident and injury occurring on or about December 20, 2004. Respondents have controverted the claim in its entirety, maintaining that the alleged injury did not arise out of and during the course of claimant's employment with Cracker Barrel Old Country Store.

A procedural history of the claim is warranted. The claimant, by and through her former attorney, the Honorable Jim Burton, filed a Commission Form AR-C on or about February 7, 2005. As previously noted, respondents controverted the

claim in its entirety. After controverting the claim, respondents propounded discovery requests on the claimant which were not answered, and scheduled a discovery deposition which the claimant failed to attend. Thereafter, claimant's attorney filed a Motion to withdraw as attorney of record. An Order was filed by the Full Workers' Compensation Commission on May 4, 2005, relieving claimant's attorney as attorney-of-record. No further action has been taken since that time. On January 23, 2006, respondents, by and through its attorney, filed a Motion to Dismiss for want of prosecution. The claim was then assigned to this administrative law judge. A letter was sent to the claimant on January 24, 2006, both First-Class and Certified Mail requesting that the claimant respond to the Motion to Dismiss and that failure to respond could result in the dismissal of the claim. No response was received. On February 15, 2006, a Notice of Hearing was sent to the claimant both Certified Mail, Return-Receipt Requested, and First-Class mail. The claimant failed to appear at the scheduled hearing. The subject of the hearing was the Motion to Dismiss the claim. Respondents introduced documentary evidence in support of its Motion. From a review of the record as a whole, 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 or about February 7, 2005, the claimant filed a claim for benefits alleging a work-related injury.

3. The claimant has failed to prosecute her claim.
4. Respondents have controverted this claim in its entirety.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4).

#### DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the documentary evidence reflects that the claimant has failed and/or refused to prosecute her claim. The claimant has been advised that her failure to respond to prior correspondence, as well as to appear at the scheduled hearing, would result in the dismissal of her claim. A hearing was scheduled at respondents' request pursuant to the decision in *Dillard vs. Benton County Sheriff's Office*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (C.A. 04-025, Opinion delivered September 22, 2004).

After a full consideration of the facts, issues, and the law, and with notice of the hearing 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 imposed by Arkansas law.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge