

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310564

SAMANTHA C. WALLACE, EMPLOYEE	CLAIMANT
COCA-COLA ENTERPRISES, INC., EMPLOYER	RESPONDENT
PACIFIC EMPLOYERS INSURANCE COMPANY c/o ESIS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED SEPTEMBER 5, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on September 1, 2006, at Marion, Crittenden County, Arkansas.

Claimant appeared in person and by Mr. James C. Hale, III, on behalf of claimant's attorney, Mr. Thomas A. Young, Attorney-at-Law, Marion, Arkansas.

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

STATEMENT OF THE CASE

A hearing was conducted on September 1, 2006, in Marion, Arkansas, to determine whether this claim should be dismissed for want of prosecution pursuant to *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, \_\_\_ S.W.3d \_\_\_ (2004). After a review of the Commission's file, the arguments made by the parties, and all other matters properly before the Commission, I find that respondents' request should be denied for various reasons set out further below.

A procedural history of the claim is warranted. The claimant sustained an admitted compensable injury on or about September 29, 2003. Respondents accepted and paid various benefits as reflected by a Commission Form AR-4 filed June 19, 2004. On or about June 30, 2004, a Commission Form AR-C for

additional benefits was filed by the claimant. The claim was filed by one Karen J. Owings of the Greene Law Firm. Subsequently, attorney Michael A. LeBouf filed a petition on behalf of attorney Karen Owings and the Firm to be relieved as counsel for the claimant. A Commission Order was filed October 25, 2004, granting the Motion. Next, by letter dated January 26, 2005, a letter of representation was filed by Thomas A. Young who was retained by the claimant to represent her interests. On May 6, 2005, respondents filed a Motion to Dismiss the claim. Claimant's attorney promptly objected to the Motion and an Order was filed May 31, 2005, denying the Motion to Dismiss for want of prosecution. A second Motion to Dismiss was filed July 20, 2006. A letter dated July 21, 2006, was sent to claimant's attorney giving the claimant twenty (20) days to respond to the Motion and/or request a hearing. No response was received. Accordingly, at respondents' request, a hearing was scheduled on the Motion. The hearing notice was sent August 15, 2006, scheduling the claim for a hearing on the Motion for September 1, 2006.

The claimant appeared at the scheduled hearing. Following an extended delay, James C. Hale, appeared on behalf of claimant's attorney and announced that as the result of some clerical error, Mr. Young was not available. Mr. Hale further announced that he was unfamiliar with the claim file, but, merely appeared in order to avoid any sanctions.

Respondents' attorney pointed out that respondents had propounded

discovery requests to the claimant on August 18, 2004, as well as on claimant's newly retained attorney thereafter which the claimant had never answered. Respondents' attorney candidly conceded that no Order to Compel had ever been requested. At the within hearing, respondents' attorney asked that the claimant be compelled to answer all discovery and that the claimant be required to either prosecute her claim or that the claim be dismissed. Respondents' counsel pointed out that a copy of its Motion to Dismiss and brief in support of the motion had been sent to both Attorney Thomas A. Young and Attorney Bill Stanley who had apparently been associated in this claim. I feel compelled to point out that no notice of Attorney Bill Stanley's representation has been filed with this Commission. 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 or about June 30, 2004, the claimant filed a claim for additional benefits related to a September 29, 2003, claim.
3. Extraordinary circumstances exist which prevent a dismissal of this claim at this time.
4. The claimant must respond to all discovery requests forthwith in order to avoid a dismissal of her claim.
5. All issues are, by necessity, specifically reserved.

### 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 not abandoned her claim and wishes to pursue to claim for additional benefits. A hearing was scheduled at respondents' request. The claimant appeared at the hearing. Although claimant's attorney failed to appear, it is clear from the foregoing that there has been a failure to communicate between the parties, as well as failure of claimant's attorney to communicate with this Commission

### ORDER

Pursuant to Commission Rule 099.16, claimant is directed and ordered to answer Interrogatories previously propounded and produce the documents requested forthwith, or file specific, written objections thereto.

Contemporaneous with the responses to interrogatories and production of documents, claimant's attorney is to submit responses to Prehearing Questionnaire, a copy of which is enclosed.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge