

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F309132**

**LATONYA WILBOURN, EMPLOYEE**

**CLAIMANT**

**SEMPERCARE, INC., EMPLOYER**

**RESPONDENT**

**COMMERCE & INDUSTRY INSURANCE CO.  
c/o AIG CLAIM SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION AND ORDER OF DISMISSAL FILED OCTOBER 18, 2006**

This matter comes before the Commission on the respondents' Motion to Dismiss for Failure to Prosecute. The claimant sustained an injury on or about July 24, 2003, while working for respondent employer and benefits were paid. The claimant sent a letter to the Commission which was received on January 31, 2006, requesting a hearing for additional benefits. Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties on April 13, 2006. Respondents filed a response to the Prehearing Questionnaire on April 24, 2006. The claimant failed to file a response to the Prehearing Questionnaire and the file was returned to the Commission's general files on May 18, 2006. Respondents filed a Motion to Dismiss for Failure to Prosecute on August 16, 2006. Respondents advised by letter dated August 18, 2006, that the parties had reached an amicable settlement and filed a Joint Petition for Final Settlement on August 21, 2006. The joint petition was scheduled for hearing on September 7, 2006, and notice was mailed to the parties. The claimant did not appear for the scheduled joint petition hearing. Respondents requested by letter dated September 7, 2006, that its Motion to Dismiss filed August 16, 2006, be renewed and that an Order of Dismissal be

entered. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail on September 14, 2006, and received by claimant, as evidenced by the certified mail return receipt signed by the claimant dated September 15, 2006. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant failed to appear at the hearing scheduled on October 12, 2006.

Commission Rule 13 provides in relevant part as follows:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to appear and prosecute this claim, I find that pursuant to Commission Rule 13, this claim should be, and hereby is, dismissed without prejudice.

**IT IS SO ORDERED.**

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**BARBARA WEBB**  
Administrative Law Judge