

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F509238

JENNIFER A. WOOD, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED JULY 19, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on June 8, 2006, at Little Rock, Pulaski County, Arkansas.

Pro Se Claimant, JENNIFER A. WOOD, did not appear at the hearing.

Respondents represented by HON. DALE BROWN, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on June 8, 2006, in Little Rock, Arkansas, to determine whether the above-captioned claim should be dismissed for want of prosecution pursuant to *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W. 3d ___ (2004). After a review of the record, Commission's file, and all other matters properly before the Commission, I find this claim shall be dismissed without prejudice for want of prosecution.

The claimant originally filed an AR-C with the Ark. Workers' Compensation Commission on August 24, 2005, alleging a left side back injury. The AR-C listed the date of claimant's injury as August 4, 2005. The claimant checked boxes for additional and initial benefits on her AR-C form. Subsequently, respondents sent a letter to the Commission on September 14, 2005, stating they had accepted the claim as compensable.

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No action was taken on the claim for six months and on March 13, 2006, the respondents filed a motion for dismissal pursuant to A.C.A. §11-9-702. This Administrative Law Judge sent the claimant a copy of the Motion to Dismiss with a letter advising the claimant to respond within ten (10) business days. (Comm. Ex. 1.)

The claimant failed to respond to the Motion to Dismiss and a hearing was set on the Motion for June 8, 2006, in Little Rock, Arkansas at 11:45 a.m. Said Notice of hearing was sent to the claimant by certified mail and regular U. S. Mail. The claimant failed to appear at the hearing of June 8, 2006.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her claim, but has failed to prosecute this case. More than six (6) months have passed since the claimant's AR-C Form was filed with the Commission and no other action has been taken by the claimant since the AR-C filing. This claim shall be dismissed without prejudice pursuant to A.C.A. §11-9-702(a)(4) and A.C.A. §11-9-702(d).

There are three provisions for dismissal of claims:

1) A.C.A. §11-9-702(a)(4) which states:

"If, within 6 months of the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (9)(1)(3) of this section."

2) A.C.A. 11-09-702(d) states:

"If, within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section."

3) Commission Rule 99.13, which states in part:

"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."

I make the following Findings of Fact:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

- 2) The claimant has failed to request a hearing within six (6) months of her filing an AR-C Form. Pursuant to A.C.A. §11-9-702(d), this claim is hereby dismissed without prejudice subject to the refiling of the claim within Statute of Limitations outlined in A.C.A. §11-9-702(a)(i)(3).

I find that the claimant has failed to make a bona fide request for a hearing within six (6) months after the filing of her claim.

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ORDER

At the request of the respondents, and after hearing, this case is hereby dismissed without prejudice pursuant to A.C.A. §11-9-702(a)(4) and §11-9-702(d) subject to the refiling of the claim within the applicable statute of limitations period.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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