

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510657

ROBERT J. YEARBER, **EMPLOYEE** **CLAIMANT**

PINNACLE STRUCTURES, **EMPLOYER** **RESPONDENT**

ZURICH AMERICAN INSURANCE CO., **CARRIER** **RESPONDENT**

OPINION FILED AUGUST 25, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on August 23, 2006 at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

After review of the Commission's file, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C on August 6, 2005 alleging a knee injury on August 22, 2005. The claimant did not respond to discovery requests and Michael White withdrew as the claimant's attorney through an Order entered by the Full Commission on June 2, 2006.

_____ On June 14, 2006 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to the claimant. To date, there has been

no reply to the Motion and no request for a hearing from the claimant.

A hearing notice was sent to the claimant by certified mail on July 31, 2006.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):

If within six (6) months after 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 (a)(1)-(3) of this section.

Rule 13:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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. (Effective March 1, 1982)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the initial hearing pursuant to Rule 13.

I find the claimant has had adequate time to investigate this claim and respond to the Notices, but we have apparently lost contact with the claimant.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to (Rule 13/ and §11-9-702(a)(4)) of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge