

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609486

BRANDON AUTRY, EMPLOYEE

CLAIMANT

R. A. W. CONSTRUCTION, EMPLOYER

RESPONDENT

ZENITH INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED FEBRUARY 21, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 16, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE ROBERT M. CEARLEY, JR., Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claim on the motion to dismiss for want of prosecution filed herein by the respondents.

On January 30, 2007, a pre-hearing conference was conducted on the motion, from which a Pre-hearing Order of the same date was filed. The claimant failed to participate in the pre-hearing conference. The January 30, 2007, Pre-hearing Order and Hearing Notice recited the date, time and location of the scheduled hearing on the respondents's motion, and was forwarded to the parties by certified mail return receipt requested.

Two days subsequent to the January 30, 2007, scheduled pre-hearing conference the

claimant contacted the Commission and was informed of the scheduled February 16, 2007, hearing in Jonesboro, Craighead County, Arkansas on the motion to dismiss for want of prosecution filed by respondents. Claimant was informed that the January 30, 2007, Pre-hearing Order and Hearing Notice had been mailed to his residence via certified mail, returned receipt requested, and that affirmative measures were required on his part, either by himself or through his attorney, claimant having represented that his attorney was pursuing the claim.

On the date of the scheduled February 16, 2007, hearing claimant failed to appear at the hearing location. Claimant contacted the office of the Commission on the morning of the scheduled hearing to report that he had received the January 30, 2007, Pre-hearing Order and Hearing Notice on February 15, 2006, that he was represented by an attorney and that he would be unable to attend the scheduled hearing.

DISCUSSION

Brandon L. Autry, the claimant, with a date of birth of February 7, 1980, is a resident of Lexington, Tennessee. Claimant commenced his employment with respondent-employer on July 11, 2006, as operator. Claimant was hired by respondent-employer in Arkansas, and was working on a job site Blytheville, Mississippi County, Arkansas on July 20, 2006, when he reported having sustained an injury to leg.

The claimant completed a Form AR-C on August 23, 2007, with the Arkansas Workers' Compensation Commission seeking workers' compensation benefits as a result of the claimed July 20, 2006, injury. On or about September 12, 2006, respondents filed with the Arkansas Workers' Compensation Commission a Form 1A-1 and a Form AR-2 in response to the claimant's filing. Respondents controverted the compensability of the claimant's July 20, 2006,

claim.

Respondents, through their attorney, propounded discovery upon the claimant, and attempted to schedule the deposition of the claimant. Claimant failed to comply with the discovery or to available himself for a deposition. Claimant declined to provide the identification of any attorney while maintaining that he was represented by counsel.

On November 29, 2006, respondents filed with Arkansas Workers' Compensation Commission a Motion to Compel the claimant to cooperated with discovery. On December 6, 2006, the Order to Compel was entered by the Arkansas Workers' Compensation Commission directing compliance within ten (10) days of receipt of same. The claimant failed to comply with the afore order.

On December 27, 2006, respondents renewed their motion to dismiss for want prosecution and the claimant's failure to comply with the order to compel. Notice of the afore was furnished to the claimant by certified mail return receipt. The afore notice also provided for the claimant to notify the Commission of no later than January 25, 2007, of his objection to the entry of the dismissal and provided the further safeguard of a January 30, 2007, scheduled telephone conference in the event of a response to the notice.

The claimant failed to contact the Commission on or before January 25, 2007, in accordance with the January 2, 2007, certified notice. An efforts to reach the claimant on January 30, 2007, via the telephone number contained in the Commission file, at the time designated for telephone conference was unsuccessful. As noted above, due to caller identification the claimant did contact the Commission approximately two (2) days following the January 30, 2007, scheduled telephone conference.

The claimant failed to put forth any affirmative appreciative effort in the prosecution of this claim until the morning of the scheduled February 16, 2007, hearing on the motion to dismiss the claim for want of prosecution. Respondents assert that the claim should be dismissed with prejudice in light of the claimant's failure to comply with the Order to Compel entered by the Commission. In the alternative, respondents assert cost should be assessed against the claimant for his action in necessitating the hearing.

The February 16, 2007, hearing on the Motion to Dismiss for Want of Prosecution was scheduled to begin at 1:30 p.m., in Jonesboro, Craighead County, Arkansas. On February 16, 2007, at 10:43 a.m., the Commission received a faxed correspondence on the letter head of attorney Robert M. Cearley, Jr., reflecting that he represented the claimant. The correspondence further reflects that the claimant received notice of a scheduled February 16, 2007, hearing on the afternoon of February 15, 2007. Finally, the correspondence reflected that Attorney Cearley was out of town in deposition on February 16, 2007, and requested that the hearing be postponed.

IT IS THEREFORE ORDERED that the Motion to Dismiss for Want of Prosecution as filed herein by the respondents is respectfully denied; and that the request of respondents that cost associated with this preceding be assessed against the claimant will be held in abeyance pending further adjudication.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE