

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609562

MICHAEL V. BABB, EMPLOYEE	CLAIMANT
ROTHS WRECKER SERVICE, INC., EMPLOYER	RESPONDENT
MIDWEST INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JUNE 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on June 15, 2007 at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear at the hearing.

Respondents were represented by the HONORABLE Mike Stiles, Attorney at Law, Little Rock, Pulaski County, 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, 192 S.W.3d 287 (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 29, 2006 alleging a back injury on August 8, 2006. A review of the Commission's file shows the claim was controverted based on lack of notice; lack of objective medical findings; and a pre-existing condition as explained in Mr. Mayton's letter of September 15, 2006. The claimant did not respond to discovery requests (interrogatories were sent out October 9, 2006) and there has been no further activity in the file.

_____ On April 17, 2007 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, or to the Commission's letter of April 23, 2007 setting a deadline of May 14, 2007 for a response.

A hearing notice was sent to the claimant by certified mail on May 16, 2007. None of the correspondence sent to the claimant has been returned by the post office.

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 pursue this claim and respond to the Notices. 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