

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607827

JONI H. BARKER, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED SEPTEMBER 25, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 21, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant pro se.

Respondent represented by the HONORABLE ANDREW M. IVEY, 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 respondent. On August 14, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing reflects the issue to be addressed during the course of the hearing, as well as the time, date and location of the hearing on the Motion to Dismiss for Want of Prosecution. The notice of the Pre-hearing conference and the Pre-hearing Order are herein designated a part of the record as Commission Exhibit #1.

In addition to the above, also comprising the record in this claim are the Motion to Dismiss for Want of Prosecution and Brief in Support of Respondent's Motion to Dismiss for

Want of Prosecution.

DISCUSSION

Joni H. Barker, the claimant, with a date of birth of October 12, 1988, commenced her employment with respondent on December 3, 2003, as a full time employee. On March 13, 2006, the claimant sustained a compensable right eye injury. The injury was accepted by respondent as compensable and appropriate corresponding workers' compensation. The claim was accepted as a medical only claim, respondent having provided the claimant with medical treatment through its authorized medical provider.

Claimant last received sanctioned medical treatment relative to her compensable right eye injury on or about June 6, 2006. During the June 6, 2006, visit, the claimant was released to return to full time work without restrictions. Claimant was also provided a new prescription with Bifocal and directed to follow up in one (1) year and PRN.

On July 14, 2006, the claimant filed a Form AR-C relative to the compensable March 13, 2006, right eye injury, which was received by the Arkansas Workers' Compensation Commission on July 19, 2007. Since the filing of the afore the claimant has failed to take any further action on the claim, to include a request for a hearing to resolve any disputed issues.

On or about July 9, 2007, respondent, through its attorney, filed the present Motion to Dismiss for Want of Prosecution along with supporting brief. Once the file was assigned to the Adjudication Division of the Arkansas Workers' Compensation Commission, in furtherance of the Motion to Dismiss, correspondence was forwarded to the claimant by certified mail return receipt requested notifying her of the filing of the Motion to Dismiss, and soliciting a responsive filing to same as well as a responsive filing to the Questionnaire, which was also forwarded with

the notice.

Respondent takes the position that pursuant to Ark. Code Ann. §11-9-702 (a)(4) the present claim should be dismissed since a bona fide request for a hearing has not been made within six months after the filing of the claim for compensation. Respondent also argues that pursuant to Rule 13 of the Arkansas Workers' Compensation Commission that upon a 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.

It is undisputed that the claimant sustained a compensable right eye injury on March 13, 2006. Further, the credible evidence reflects that respondent accepted the March 13, 2006, injury as compensable and paid appropriate corresponding benefits. The claim was treated as a medical only claim. Respondent paid medical benefits in the claim. The claimant last received medical treatment on June 6, 2006, at which time, after being furnished a new prescription for bifocal and directions to follow up in one (1) year and PRN, she was released to return to full duty work without restrictions. The claimant filed the July 14, 2006, Form AR-C relative to her March 13, 2006, compensable right eye injury, with the Arkansas Workers' Compensation Commission on July 19, 2006.

Since the respondent had accepted and paid appropriate corresponding workers' compensation in connection with the claimant March 13, 2006, compensable right eye injury, the July 14, 2006, Form AR-C filed by the claimant was, by operation, a claim for additional workers' compensation benefit to those previously provided by the respondent, being fully

cognizant of Ark. Code Ann. §11-9-702 (c). Accordingly, the appropriate statutory provision to address respondent's Motion to Dismiss for Want of Prosecution is lodged under Ark. Code Ann. §11-9-702 (d), which provides:

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.

There is no evidence in this record that the claimant has requested a hearing in her claim or as a result of the July 14, 2006, Form AR-C which she filed with the Arkansas Workers' Compensation Commission on July 19, 2006. Indeed, the credible evidence is to the contrary. According, after a through consideration of all of the evidence in this record I find that the Motion to Dismiss for Want of Prosecution as filed herein by the respondent should be granted.

IT IS THEREFORE ORDERED, that the Respondent's Motion to Dismiss the present claim without prejudice for Want of Prosecution, is herein granted pursuant to Rule 099.13 and Ark. Code Ann. §11-9-702 (d).

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE