

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306316

HOWARD I. BENNETT, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED JUNE 28, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on June 15, 2007, at Forrest City, St. Francis County, Arkansas.

Claimant appeared, *pro se*.

Respondents represented by Ms. Susan M. Fowler, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted June 15, 2007, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

This claim concerns an admitted accident and injury occurring on or about June 2, 2003. The claim has been the subject of multiple hearings and has an extremely lengthy procedural history. A summary of the procedural history is warranted.

The claim was first the subject of a hearing conducted on November 11, 2004, at which time the claimant was represented by an attorney. An Opinion was issued on December 14, 2004, awarding the claimant various benefits. No appeal was taken by either party from the December 14, 2004 opinion and award. The

claimant's attorney subsequently withdrew as attorney-of-record for the claimant in March, 2005. Thereafter, the claimant, *pro se*, requested additional benefits, specifically, additional medical treatment. The claim was then the subject of a mandatory mediation conference which apparently failed, at which time the claim was returned to the Commission's general files. Respondents, subsequently, filed a Motion to Dismiss the claim for failure to prosecute on April 27, 2006, to which the claimant objected. An Order was filed May 10, 2006, denying respondents' Motion. The claimant subsequently filed a claim for additional benefits related to an alleged cervical injury sustained at the same time of the claimant's admitted June 2, 2003 low back injury. A second hearing was conducted on October 6, 2006, to determine compensability of the alleged cervical injury. In addition to disputing compensability of the cervical injury, respondents also raised the affirmative defense of statute of limitations. An Opinion was filed by the administrative law judge on November 14, 2006, denying compensability of the alleged cervical injury. However, the administrative law judge found that the claim was not barred by statute of limitations. The claimant did not appeal the adverse decision concerning compensability of the cervical injury. For some inexplicable reason respondents appealed the finding concerning statute of limitations. By an Opinion and Order filed January 31, 2007, the Full Workers' Compensation Commission found that the statute of limitations issue raised by respondents was moot and dismissed respondents' appeal.

Thereafter, respondents filed a second Motion to Dismiss the claim for want

of prosecution. A letter was sent to the claimant, certified-mail, return receipt requested, on April 24, 2007, requesting that he review respondents' Motion and respond. The claimant failed to respond. Accordingly, a Notice of Hearing was sent to the claimant on May 16, 2007, both certified-mail and first-class mail, scheduling a hearing for June 15, 2007. The subject of the hearing was respondents' Motion to Dismiss the claim.

The claimant appeared at the June 15, 2007 hearing. The claimant was advised of his right to pursue additional benefits related to the June 2, 2003, low back claim which was the subject of the November 12, 2004, Opinion and Award. It was further explained to the claimant that the pending Motion related to the entire claim. The claimant stated that he did not object of the dismissal of the claim. The record of the pending Motion consists solely of the transcript of the June 15, 2007, hearing, together with correspondence identified above which is incorporated by reference.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On or about June 2, 2003, the claimant sustained a compensable injury arising out of and during the course of his employment with Wal-Mart Stores, Inc.
3. The prior decisions in this claim filed on December 14, 2004, and November

14, 2006, are final decisions and the law of the case.

4. Respondents have controverted claimant's entitlement to all additional benefits.
5. The claimant has failed to prosecute his claim.
6. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(d) and Commission Rule 099.13.

#### DISCUSSION

\_\_\_\_\_ Rather than conduct a further analysis of the record in this cause, suffice it to say that the record reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to prosecute the claim would result in its dismissal. A hearing was scheduled at respondents' request pursuant to the decision in *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, \_\_\_ S.W.3d \_\_\_ (2004). The claimant appeared at the scheduled hearing and announced that he had no objection to the dismissal of the claim.

After full consideration of the facts, issues, and the law, and, with notice being received by the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed.

IT IS SO ORDERED.

---

DAVID GREENBAUM  
Chief Administrative Law Judge