

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F610090

JESSIE BOYTE, EMPLOYEE

CLAIMANT

**INTERSTATE BRANDS CORPORATION,
EMPLOYER**

RESPONDENT

**ACE AMERICAN INS. CO. C/O ESIS, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED OCTOBER 18, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit on October 10, 2007, in Little Rock, Pulaski County, Arkansas.

The unrepresented claimant failed to appear.

The respondents were represented by Ms. Farrah L. Fielder, Attorney at Law, Fort Smith, 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, the full hearing, and a review of the hearing record, I find the motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C form with the Commission on September 11, 2006, through Attorney Neal Hart alleging a compensable back injury. A hearing was set for April 11, 2007, to determine compensability; however, prior to the April 11, 2007,

JESSIE BOYTE - F610090

scheduled hearing claimant's attorney requested the hearing come off the Commission docket and that he be relieved as counsel for the claimant. With no objection from the claimant, the April 11, 2007, hearing was taken off the Commission's docket and Attorney Hart was relieved as counsel of record for the claimant.

Respondent then filed a motion to dismiss for lack of prosecution on July 13, 2007, with a certificate of service to the claimant. The claimant never responded to the motion to dismiss in writing. This administrative law judge sent the claimant a copy of respondents' motion to dismiss with a cover letter advising claimant to file a response within fifteen days. (Com. Ex. 2). Still, with no response from the claimant, a hearing was set for October 10, 2007, at 1:00 p.m. and a notice of said hearing was sent to the claimant by both certified and regular mail. (Com. Ex. 3). Proof of claimant's receipt of the certified notice of hearing was introduced into the hearing record on October 10, 2007, as Com. Ex. 4 and shows claimant received the certified notice on August 28, 2007. The claimant failed to appear at the scheduled hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

There are two provisions for dismissal of claims:

JESSIE BOYTE - F610090

A.C.A. § 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 failed to prosecute his claim.
- 3) The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents and after a full hearing, this case is hereby

JESSIE BOYTE - F610090

dismissed without prejudice for failure to prosecute pursuant to A.C.A. § 11-9-702
and Rule 99.13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb