

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F403814

DEBRA BRYAN, EMPLOYEE	CLAIMANT
CRACKER BARREL OLD COUNTRY STORE, EMPLOYER	RESPONDENT
FIDELITY & GUARANTY INSURANCE/ ST. PAUL TRAVELERS/ GALLAGHER BASSETT SERVICES, CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 9, 2007

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on March 28, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on March 28, 2007, to determine whether the above referenced matter should be dismissed for failure to prosecute. The records consists of the transcript of the March 28, 2007 hearing and the exhibits contained therein.

After consideration of the documentary exhibits, I find that the respondent's motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C on March 7, 2006 alleging a right knee injury on February 17, 2003. A review of the Commission's file shows the claim was accepted as compensable and medical expenses with Dr. Ghormley were paid until her release in April

2004. Dr. Ghormley assessed the claimant with a 7% rating to the lower extremity in a report dated May 25, 2004.

A letter from the claimant requesting a hearing was filed April 10, 2006. The matter was assigned to Legal Advisor Johnny Gregory who sent a Preliminary Notice to the claimant as well as the respondent, to which no response was furnished by April 28, 2006. The file was then submitted to former Administrative Law Judge Arey for handling. On May 4, 2006, Judge Arey sent a Prehearing Notice and Questionnaire to the claimant instructing her to file a completed Questionnaire and relevant exhibits within 20 days from date of the Notice, but the claimant failed to respond. Therefore, Judge Arey returned the case to general files on June 19, 2006.

By way of correspondence dated June 26, 2006, sent by respondents' counsel to the claimant, the claimant was notified of the Respondents' representation, their willingness to mediate, and their need to also begin the discovery process. It is specifically noted that Interrogatories were sent to the claimant for her to answer and to outline the benefits at issue, but the claimant failed to do so.

On January 30, 2007, the respondent filed a Motion to Dismiss and Brief in support thereof to dismiss the case pursuant to Ark. Code Ann 11-9-702(d) and Rule 099.13 with a certificate of service to the claimant.

A second notice was sent to the claimant by the Commission on February 1, 2007. To date, there has been no reply to the Motion.

A hearing notice was sent to the claimant by certified mail on February 28, 2007.

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 this claim: Ark. Code Ann. §11-9-702(d):

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 subdivisions (b) of this section.

Rule 099.13:

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 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.
3. That the Motion to Dismiss should be granted pursuant to Commission Rule 099.013.

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

