

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F006225 & F503790

DAVID O. CAGLE, EMPLOYEE	CLAIMANT
SOUTHWESTERN BELL TELEPHONE (AT&T), EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, CARRIER	RESPONDENT

OPINION FILED JULY 31, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on July 27, 2007, at Pine Bluff, Jefferson County, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, 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 a letter on May 9, 2005 alleging a right knee injury on April 8, 2005. A review of the Commission's file shows the claimant filed a claim for a previous back injury on May 17, 2004 (Claimant #F006225). This claim was paid and the claimant returned to work for the respondent-employer. The claimant now contends that the knee injury was causally related to an August 4, 1978 injury.

A mediation conference was held in July, 2005 on the knee injury at which time the

respondents raised the issues of the statute of limitations and a lack of a causal connection between the two injuries. The carrier filed a form AR-2 dated April 26, 2005 denying the claim.

The claimant did not comply with discovery requests and there has been no activity in the file since 2005.

_____ On May 31, 2007 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to the claimant. The Commission sent the claimant a letter on June 11, 2007 by certified mail asking the claimant to respond by July 2, 2007. To date there has been no reply.

A hearing notice was sent to the claimant by certified mail on July 5, 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 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 refile 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