

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F507560

DEBORAH CALHOUN, EMPLOYEE	CLAIMANT
DREW MEMORIAL HOSPITAL, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES (TPA), INSURANCE CARRIER	RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED MARCH 23, 2007

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant sent a letter to the Commission requesting a hearing on her claim, which was received on November 2, 2005. The file was assigned to the Legal Advisor Division and the claimant returned a Legal Advisor Claimant Questionnaire on November 16, 2005, indicating that she was willing to mediate. The respondents returned a Legal Advisor Preliminary Notice on December 2, 2005, indicating that respondents were not willing to mediate. Subsequently, the file was assigned to an Administrative Law Judge and on April 4, 2006, Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties. The respondents filed a response to the Prehearing Questionnaire on April 12, 2006. The claimant failed to file a response to the Prehearing Questionnaire and the file was returned to the Commission's general files on May 10, 2006. By letter dated December 28, 2006, respondents notified the Administrative Law Judge that it had propounded interrogatories to the claimant on December 1, 2005, and that, to date, the claimant had failed to respond to the interrogatories. Further, respondents requested in its December 28, 2006 letter that the claim be dismissed

for lack of prosecution. The Commission gave notice to the claimant of the respondents' request for dismissal by letter dated January 9, 2007, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of her claim. No response thereto has been received from the claimant. A Notice of Hearing on respondents' motion to dismiss was sent to the parties via certified mail and first-class mail on February 12, 2007, and was received by claimant, as evidenced by the certified mail return receipt signed by the claimant dated February 14, 2007. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant failed to appear at the hearing scheduled on March 14, 2007. The claimant has filed no request for hearing within the last six (6) months.

Commission Rule 13 provides in relevant part as follows:

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to

Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge