BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F411609

FRANCINE CANADY, EMPLOYEE	**CLAIMANT**
VIRCO MANUFACTURING, EMPLOYER	**RESPONDENT**
CRUM & FORSTER, CARRIER	**RESPONDENT**

OPINION FILED MAY 3, 2007

Hearing before Administrative Law Judge O. Milton Fine II on April 19, 2007 in Little Rock, Pulaski County, Arkansas

Claimant, *pro se*, did not appear.

Respondents represented by Ms. Betty J. Hardy, Attorney at Law, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on Respondents' motion to dismiss. A hearing on the motion was conducted on April 19, 2007, in Little Rock, Pulaski County, Arkansas. The Claimant did not appear. Respondents were represented by Ms. Betty J. Hardy, Attorney at Law, of Little Rock, Arkansas.

Respondents on March 16, 2007 filed a motion, received as Respondents' Exhibit 1, asking the Commission to dismiss the instant claim. No hearing was requested until Respondents filed their first motion to dismiss on October 20, 2006. (This document, along with the rest of the Commission file, has been blue-backed per the request of Respondents.) The undersigned sent a letter to Claimant by certified mail, giving her fifteen (15) days to respond to the motion. Claimant sent

a handwritten note, which the Commission received on November 1, 2006, in which she stated that she wished to pursue her claim. Liberally interpreting this as a request for a hearing, the undersigned denied the motion to dismiss in an order entered on November 2, 2006.

Prehearing questionnaires were sent to the parties. Respondents promptly returned their response, which was filed on November 14, 2006. No response came from Claimant, however. On December 4, 2006, the undersigned sent by certified mail a letter to Claimant (to the address successfully used previously) warning her that if an appropriate response was not received within ten (10) days, her case would be returned to the Commission's general files. When no response was forthcoming, the claim was returned to the Commission's general files on December 14, 2006.

Following the filing of the motion at hand, the undersigned sent a certified letter to Claimant, giving her ten (10) days to respond to the motion. Again, no response was forthcoming from Claimant. A hearing on the motion was set for April 19, 2007, and notice of the hearing was provided by first-class and certified mail to the parties. The certified notice was returned to the Commission unclaimed. However, the notice sent first-class mail was not returned.

At the hearing, Respondents submitted that the claim stemmed from an alleged accident on June 11, 2001. It was a carpal tunnel claim that was accepted as compensable and for which benefits were paid. A Form C was filed on November 4, 2004, requesting additional benefits. No hearing was requested, leading to the filing of the first motion to dismiss. Moreover, according to

Respondents, interrogatories were propounded to Claimant on November 17, 2006. Claimant never responded, despite the fact that Respondents sent a reminder letter on January 31, 2007. At present, Respondents are unaware of any relief Claimant is requesting; and the last response Claimant has provided to either the Commission or Respondents was the November 1, 2006 handwritten note discussed above.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The Claimant has failed to prosecute her claim.
3. This claim should be, and hereby is, dismissed without prejudice pursuant to AWCC R. 099.13.

DISCUSSION

Under AWCC R. 099.13,

> 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.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996)(discussing Rule 13).

The evidence adduced at the hearing, notice of which was provided to Claimant, clearly shows that she has failed to prosecute her claim. For that reason, Respondents' motion is well-founded and is hereby granted, dismissing this claim without prejudice.

IT IS SO ORDERED.

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O. MILTON FINE II
Administrative Law Judge