

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601579

VICKI J. CARVER, EMPLOYEE

CLAIMANT

JEFFERSON COMPREHENSIVE CARE, EMPLOYER

RESPONDENT

AIG CLAIMS SERVICE, CARRIER

RESPONDENT

OPINION FILED APRIL 25, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on April 19, 2007 at Little Rock, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE MELISSA WOOD, 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 letters on February 13, 2006, June 23, 2006, June 19, 2006 and an AR-C on February 13, 2006 alleging a back and right knee injury on September 13, 2004. A review of the Commission's file shows the claim was accepted as a "medical only" file based on Form AR-2. The claimant contacted the Legal Advisor Division on several occasions but declined mediation. The claimant also filed a Change of Physician with the Medical Cost Containment Division in February 2006 which was approved.

In response to th claimant's hearing request, a prehearing conference notice was sent to the parties in July 2006. However, the claimant did not file a prehearing questionnaire, medical release, and exhibits by the deadline and the case was returned to general files on August 18, 2006.

The respondents also tried to initiate discovery (with Interrogatories, a medical release and deposition) but the claimant did not respond.

The claimant has not requested a hearing in the last six months and there has been no activity in the file since 2006 on behalf of the claimant.

_____ On February 28, 2007 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to the claimant. To date, there has been no reply to the Motion.

A hearing notice was sent to the claimant by certified mail on April 3, 2007 setting this claim for a dismissal hearing on April 19, 2007. The claimant's mail has not been returned to the Commission and she has not contacted the Commission for a continuance.

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 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 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 investigate 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 both Rule 13 and §11-9-702(a)(4) of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge