

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306047

SCOTTY COLLINS,EMPLOYEE

CLAIMANT

BRIDGESTONE/FIRESTONE,EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE
COMPANY, CARRIER/TPA

RESPONDENT

Opinion filed September 6, 2007

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on August 22, 2007, in Russellville, Pope County, Arkansas.

The claimant, who is pro se, failed to appear at the hearing.

The respondents were represented by the HONORABLE Betty Hardy, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on August 22, 2007, to determine whether the above-referenced matter 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).

The record consists of the transcript of the August 22, 2007 hearing, and the exhibits contained therein. The Commission's file has been blue-backed and made a Commission's exhibit, and is hereby incorporated by reference.

After consideration of the documentary exhibits, I find that the respondents' Renewed Motion to Dismiss should be granted.

STATEMENT OF THE CASE

The claimant sustained a back injury on October 4, 2002, while working for the respondents. The respondents paid benefits for the claimant's back injury until he was released to return back to full work duty. The claimant worked for awhile and then requested some

additional benefits. The respondents controverted this claim for additional benefits. This action started the claim up again in the 2003 time period, as the claimant requested additional treatment in June of 2003. Some discovery was had and a hearing was scheduled for January 23, 2004.

Prior to the hearing, the respondents requested the claimant be evaluated by Dr. Scott Schlesinger, a neurosurgeon. The claimant refused and the Commission entered an Order on January 12, 2004 directing the claimant to submit to a medical evaluation from Dr. Schlesinger. The hearing set for January 23, 2004 was cancelled and the case was returned to the Commission's general files.

There was no further activity on the file. Therefore, on June 16, 2004, the respondents filed a Motion to Dismiss. In a facsimile memorandum filed on that same date, the claimant's attorney vigorously objected to the respondents' Motion to Dismiss and requested that the Commission's Clerk refer the file to an Administrative Law Judge for a hearing on the claimant's entitlement to additional benefits, which was done.

In a letter dated June 18, 2004, the Commission held the respondents' Motion to Dismiss in abeyance in light of the claimant's request for a hearing.

Prehearing information filings were made by the parties and the matter was set for a prehearing telephone conference on September 9, 2004.

On June 9, 2005, the claimant filed a request for a hearing on his entitlement to continued/additional medical treatment. A prehearing conference was held on July 14, 2005 regarding payment of

an MRI that had been recommended by Dr. Scott Schlesinger. However, a hearing was never conducted on the matter, but respondents provided some additional medical treatment. The claimant received a 5% impairment rating from Dr. Schlesinger which was paid by the respondents, as it was paid out in March of 2006.

There has been no activity to prosecute the claim since. On December 20, 2006, the claimant's attorney, filed a formal request to withdraw as counsel of record with the Commission. On January 22, 2007, the Full Commission entered an Order relieving the claimant's attorney as counsel of record. A copy of this Order was mailed to the claimant but has been returned to the Commission.

Subsequent to the claimant's attorney being relieved as counsel, the claimant has failed to obtain new counsel or otherwise prosecute his claim.

On June 28, 2007, the respondent filed a Renewed Motion to Dismiss with a certificate of service to the claimant. As of the date of the hearing, this Notice has been returned to the respondents and they had not heard from the claimant. A second Notice was sent by the Commission to the claimant via certified mailed on July 3, 2007. This Notice was also returned to the Commission without any response from the claimant. To date, there has been no reply to the Notices or Renewed Motion to Dismiss.

A hearing notice was mailed to the claimant via certified mail on July 24, 2007. This was returned and received back by the Commission.

A hearing was held on August 22, 2007, on the respondents'

Renewed Motion to Dismiss. The claimant failed to appear at the hearing.

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 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 claimant has had ample opportunity to pursue this case but no action has been taken by the claimant in furtherance of his claim. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
3. That the respondents' Renewed Motion to Dismiss should be granted without prejudice pursuant to Rule 099.13.

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

