

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F503334**

<b>CONNIE CURTIS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>FIRESTONE TUBE COMPANY, EMPLOYER</b>	<b>RESPONDENT</b>
<b>OLD REPUBLIC INSURANCE COMPANY, CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED MAY 7, 2007**

Hearing before Administrative Law Judge O. Milton Fine II on April 11, 2007 in Russellville, Pope County, Arkansas

Claimant represented by Mr. Aaron L. Martin, Attorney at Law, Fayetteville, Arkansas

Respondents represented by Ms. Betty 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 11, 2007 in Russellville, Pope County, Arkansas. The Claimant was represented by Mr. Aaron L. Martin of Fayetteville, Arkansas. Respondents were represented by Ms. Betty Hardy, Attorney at Law, of Little Rock, Arkansas.

In addition to the representations of counsel at the hearing, the record in this case consists of the following: Respondents' Exhibit 1, their motion to dismiss filed March 1, 2007; Respondents' Exhibit 2, a letter from Administrative Law Judge Mark Churchwell to Respondents' counsel dated September 28, 2006; and Claimant's Exhibit 1, her response to the motion to dismiss, to which was attached a Form AR-

C for Claimant dated January 20, 2006, a letter from Claimant's counsel to the Clerk of the Commission dated August 8, 2006, a letter from Gallagher Bassett Services, Inc., to Claimant's counsel dated August 16, 2006, and a letter from Claimant's counsel to his client dated March 19, 2007. Moreover, the undersigned has taken judicial notice of the filing dates of the above documents with the Commission.

As the evidence adduced at the hearing reflects, Claimant filed a Form AR-C with the Commission on February 27, 2006, requesting additional benefits in the form of medical expenses. By letter dated August 8, 2006, Claimant's counsel informed the Commission that Claimant was requesting a hearing regarding whether Respondents were liable for a \$134.00 medical bill. On August 16, Claimant's counsel was informed that the Respondent carrier would agree to pay the bill. At Claimant's request, Judge Churchwell returned the file to the Commission's general files on September 15, 2006.

Respondents filed a motion to dismiss the claim on March 2, 2007, citing Ark. Code Ann. 11-9-702(d) and AWCC R. 099.13. In her March 15, 2007 response, Claimant argued that she properly requested a hearing within six (6) months of filing her claim, and that the claim was not fully prosecuted because the Respondents elected to pay the bill in dispute. Further, Claimant stated that "[t]here currently does not appear to be any issues in dispute and the file was properly being held in general files."

At the hearing, Respondents argued that case law grants the Commission the authority to dismiss a claim where there are no justiciable issues present in a case. Moreover, Respondents contended that dismissal was proper under Ark.

Code Ann. § 11-9-704(d) if there has been no activity on the case for six (6) months. The returning of the case to the Commission's general files, according to Respondents, nullified the earlier timely hearing request by Claimants and restarted the six (6)-month clock under § 11-9-704(d). However, Respondents noted that they were not contending that the hearing request was in some way not "bona fide" for purposes of the statute.

In response, Claimant contended that she complied with § 11-9-704(d) through her earlier hearing request. Claimant argued that she could not see why the claim could not simply remain in general files and simply lapse under the statute of limitations if no further benefits are paid within a year following the payment of the \$134.00 bill. While Claimant alluded to the possibility that there may be another bill in dispute, she admitted that there currently is no justiciable issue before the Commission.

#### **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 Commission is authorized to dismiss claims lacking a justiciable issue pursuant to AWCC R. 099.13.

3. No basis exists for dismissal of this claim under Ark. Code Ann. § 11-9-702(d).
4. This claim should be, and hereby is, dismissed without prejudice pursuant to AWCC R. 099.13.

### **DISCUSSION**

Arkansas Code Annotated § 11-9-702(d) provides as follows:

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

In addition, AWCC R. 099.13 provides in relevant part:

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).

From a review of the evidence, it does not appear that there was a failure to request a hearing within the requisite period of time under § 11-9-702(d). As Respondents stated, the August 8, 2006 request was both timely and bona fide. There thus appears to be no basis for dismissal of the instant claim under this provision.

However, the Arkansas Court of Appeals in *Johnson, supra*, held that a claim could be dismissed for lack of prosecution based on the fact that there is no

justiciable issue. The authority for doing so comes under Rule 13, which the Commission promulgated under Ark. Code Ann. § 11-9-205(a)(1)(A) (Repl. 2002), which authorizes it “[t]o make such rules and regulations as may be found necessary[.]” See *Dura Craft Boats, Inc. v. Daugherty*, 247 Ark. 125, 444 S.W.2d 562 (1969); *Johnson, supra*. Contra *Dillard v. Benton Cty. Sheriff’s Off.*, 87 Ark. App. 379, 192 S.W.3d 287 (2004)(“Rule 13 . . . allows a dismissal . . . pursuant to Ark. Code Ann. § 11-9-702(b)(4), the portion of the statute relating to additional benefits”). Certainly, such a claim could be re-filed if a justiciable issue arises, provided that all other prerequisites for a cognizable claim are met.

The parties agreed that with the resolution of the \$134.00 medical bill, no justiciable issue remained in this case. Claimant alluded to another bill possibly coming into dispute, but it is clear that no issue exists at present. By Claimant’s own admission, once the bill was paid, there was nothing further to prosecute. That is the reason, as the *Johnson* Court illustrated, why cases such as the one at bar should be subject to Rule 13 dismissal.

That, however, leaves the question of whether the dismissal should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). This includes claims dismissed under Rule 13. *Johnson, supra*. In *Abo v. Kawneer Co.*, 2005 AWCC 226, Claim No. F404774 (Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have

expressed a preference for dismissals without prejudice.” (citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982); *Hutchinson v. North Arkansas Foundry*, Claim No. D902143 (Full Commission Opinion filed October 23, 1991)). In light of this preference, along with facts of this case and Respondents’ agreement that dismissal should be without prejudice, the dismissal of this claim is hereby without prejudice.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Administrative Law Judge