

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F108722

PAMELA DAVIS, EMPLOYEE

CLAIMANT

PRODUCERS RICE MILL, INC., EMPLOYER

RESPONDENT

**LIBERTY MUTUAL FIRE INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED DECEMBER 10, 2007

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant sustained a compensable injury on July 25, 2001. On March 19, 2002, claimant's attorney, Mr. Robert Buckalew, filed a Form AR-C with the Commission. By letter dated April 8, 2002, the case manager for respondent carrier, Mr. Jeffrey Johnson, advised that the claim had been accepted as compensable and appropriate benefits were being paid. By letter dated July 15, 2003, Mr. Johnson requested that an order of dismissal be entered for lack of prosecution. By letter dated July 21, 2003, Mr. Buckalew responded. By letter dated August 5, 2003, to Mr. Johnson, with a copy of Mr. Buckalew's letter, the Clerk of the Commission, Ms. Dorothy Jackson, advised that the claim was not being dismissed and was being returned to open general files. By letter dated April 20, 2004, Mr. Johnson requested that an order of dismissal be entered for lack of prosecution. By letter dated May 14, 2004, Mr. Buckalew responded. By letter dated June 3, 2004, to Mr. Johnson, with a copy of Mr. Buckalew's letter, Ms. Jackson advised that the case was being returned to open general files. By letter dated December 7, 2004, Mr. Johnson requested an order of dismissal be entered

for lack of prosecution. By letter dated December 28, 2004, Mr. Buckalew responded. By letter dated January 5, 2005, to Mr. Johnson, with a copy of Mr. Buckalew's letter, Ms. Jackson advised that the case was being returned to open general files. By letter dated June 3, 2005, Mr. Johnson requested an order of dismissal be entered for lack of prosecution. By letter dated June 14, 2005, Mr. Buckalew responded. By letter dated June 16, 2005, to Mr. Johnson, with a copy of Mr. Buckalew's letter, Ms. Jackson advised that the case was being returned to open general files. By letter dated December 19, 2005, Mr. Johnson requested an order of dismissal be entered for lack of prosecution. By letter dated December 21, 2005, Mr. Buckalew responded. The file was assigned to an Administrative Law Judge on December 28, 2005, and Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties on December 29, 2005. The claimant did not file a response to the Prehearing Questionnaire and the file was returned to general files on February 3, 2006. By letter dated August 28, 2006, Mr. Johnson requested an order of dismissal be entered for lack of prosecution. By letter dated September 13, 2006, Mr. Buckalew responded. By letter dated September 18, 2006, to Mr. Johnson, with a copy of Mr. Buckalew's letter, Ms. Jackson advised that the case was being returned to open general files. By letter dated March 23, 2007, Mr. Johnson requested an order of dismissal be entered for lack of prosecution. The file was reassigned to an Administrative Law Judge on March 30, 2007. By letter dated April 2, 2007, to Mr. Buckalew, the claimant was given twenty (20) days to respond to the request for dismissal. By letter dated March 30, 2007, which was received in the Judge's office on April 4, 2007, Mr.

Buckalew responded. By letter dated April 10, 2007, the Administrative Law Judge denied respondents' request for dismissal and Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties. The claimant's response to the Prehearing Questionnaire was received on April 19, 2007, and the respondents' response to the Prehearing Questionnaire was received on May 10, 2007. A prehearing telephone conference was held on September 18, 2007, and by letter of that same date, the claimant was given thirty (30) days to advise how she wished to proceed. No response was received, and by letter dated October 23, 2007, respondents' attorney, Mr. Guy Wade, requested that the claim be dismissed for lack of prosecution. By letter dated October 24, 2007, to the claimant, with a copy to the Ms. Jackson, Mr. Buckalew advised the claimant that he was withdrawing as her attorney and informed her of the time limits to pursue 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 scheduling the matter for hearing on December 5, 2007. The Notice was received by the claimant, as evidenced by the certified mail return receipt signed by the claimant dated October 29, 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 December 5, 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