

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F614064

DANNY T. DUCKWORTH, EMPLOYEE	CLAIMANT
DELTA PERSONNEL SERVICE, EMPLOYER	RESPONDENT
AIG CLAIMS SERVICE, INC., INSURANCE CARRIER/TPA	RESPONDENT

ORDER OF DISMISSAL FILED OCTOBER 11, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on October 8, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear.

Respondents represented by Ms. Carol Lockard Worley, Worley, Wood & Parrish, P.A., Attorneys-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on October 8, 2007, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

This claim concerns an alleged accident and injury occurring on or about November 28, 2006. Respondents have controverted the claim in its entirety, maintaining that the claimant did not sustain a compensable injury while working for Delta Personnel Service. Respondents further contended that there are no objective findings to support a compensable injury and that there has been no medical documentation presented establishing entitlement to indemnity benefits in the event compensability was found. Finally, respondents assert that no notice of any alleged injury was given until December 5, 2006, and that in the event the

claimant sustained a compensable injury, which it specifically denied, respondents would not be liable for benefits prior to the receipt of the notice of claim.

A procedural history of this claim is warranted. The claimant was originally assigned to the Legal Advisor Division for a legal advisor conference and/or a medication conference. Following failed attempts at both, the legal advisor conference and medication conference, the claim was assigned to the Adjudication Division for a hearing. A Prehearing Questionnaire was sent on March 8, 2007, to both parties. Respondents submitted responses. Because the claimant failed and/or refused to respond to the questionnaire, the claim was returned to the Commission's general files on April 4, 2007. Respondents next filed a Motion to Dismiss on or about June 25, 2007. By letter dated July 2, 2007, the claimant was given twenty (20) days to respond to the Motion. The letter was sent both Certified Mail, Return Receipt Requested, as well as First-Class mail. The Certified Mail was returned unclaimed. However, it is apparent that the claimant received the First-Class notice because he responded by letter dated July 23, 2007, again requesting a hearing and pleading that his case not be dismissed. Accordingly, an Order was filed on July 24, 2007, denying respondents' Motion. A second Prehearing Questionnaire was sent to the claimant. Again, the claimant failed and/or refused to respond to the second Prehearing Questionnaire. An August 20, 2007, letter was sent to the claimant giving him an additional ten (10) days to respond to the Prehearing Questionnaire. No response was received. A Prehearing Conference

Notice was sent to the claimant on September 4, 2007, scheduling the claim for a telephone conference on September 19, 2007.

A prehearing telephone conference was conducted on September 19, 2007. The claimant failed to make himself available for the telephone conference. Respondents appeared by and through its attorney. At the scheduled conference, respondents again requested that the claim be dismissed. Respondents pointed out that several attempts had been made to contact the claimant and obtain basic discovery and that the claimant had failed to respond. Accordingly, a hearing was scheduled on Monday, October 8, 2007. Notice of the hearing was sent to the claimant both Certified Mail, Return Receipt Requested and First-Class mail. Again, the claimant failed to appear. The certified mail, item #7115 5950 0330 0077 2104 was returned unclaimed. The notice sent to the claimant First-Class was not returned. Again, respondents asked that the claim be dismissed for want of prosecution. Respondents introduced thirteen (13) exhibits in support of its Motion.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant has filed a claim for benefits alleging a November 28, 2006, injury.
3. Respondents have controverted this claim in its entirety.

4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4).

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the documentary evidence introduced reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to prior notices, as well as to appear at the scheduled hearing would result in the dismissal of his claim. A hearing was scheduled as respondents' request pursuant to the decision in *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

After full consideration of the facts, issues, and the law, and with notice of the hearing being sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of the claim if filed within the statutory time limits imposed by Arkansas law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge