

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607545

WILLIAM D. FRANKLIN, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, INC., EMPLOYERS	RESPONDENT
ZURICH AMERICAN INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 17, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 17, 2007, at Jonesboro, Craighead County, Arkansas

Claimant pro se.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim pursuant to a Motion to Dismiss Without Prejudice filed herein by the respondents. On July 24, 2007, a Pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects the issues to be addressed during the course of the hearing and is herein designated a part of the record as Commission Exhibit #1.

The claimant failed to submit a responsive filing to the Dismissal Motion or to participate in the scheduled pre-hearing conference on the motion. Respondents have submitted documentation to include discovery efforts, correspondence and other filings as exhibits in support of the Dismissal Motion.

DISCUSSION

On June 26, 2006, the employment relationship between the claimant and respondent-employer. On July 11, 2006, the claimant filed Form AR-C alleging a burn to his arm on or about June 26, 2006, which had developed into a staph infection and seeking corresponding workers' compensation benefits. The claim was denied by respondents in its entirety. The claimant's claim file was thereafter referred to the adjudication division of the Arkansas Workers' Compensation Commission for disposition.

In August 2006, the parties agreed to participate in a voluntary mediation conference. At the time of the claimant's initial filing with the Commission he was represented by an attorney. On October 9, 2006, counsel for respondents and claimant's attorney appeared for a mediation conference in Searcy. Claimant failed to appear for the meditation conference. Nevertheless a medical authorization was furnished by the claimant, and respondents proceeded discovery and obtained the claimant's medical records.

The evidence reflects that pursuant to Motion to Withdraw as Counsel of record, on June 6, 2007, an order was filed by the Full Commission granting the motion of clamant's former attorney. On or about June 18, 2007, respondents filed the instant to Dismiss Without Prejudice, along with a Brief in Support of the Motion. Notice of the Motion was mailed to the last known address of the claimant by certified mail return receipt requested, which also included notice of a pre-hearing teleconference on the motion by the Commission. Claimant failed to respond to the Motion or to participated in the pre-hearing teleconference. A Pre-hearing Order and Hearing Notice was filed in connection with the pre-hearing conference with the same being forwarded to the last known addresses of the parties. The Pre-hearing Order and Hearing Notice of July 24, 2007, set forth the time, date, and location of the scheduled hearing on the Motion to Dismiss

Without Prejudice. At the designated time of the hearing the docket was sounded and the claimant failed to appear.

Ark. Code Ann. §11-9-702 (a) (4) provides, in pertinent part:

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. . . .

The Commission's file does reflect the presence of a August 3, 2006, correspondence to the Clerk of the Commission from the claimant's attorney at the time requesting a scheduled hearing in the claim. (See blueback exhibit). Indeed, the mechanism which causes a claim to be forwarded to the Adjudication Division of the Commission is a formal request for a hearing. Accordingly, since the hearing request was filed on or about August 3, 2006, within a month of the July 2006 filing of the Form AR-C, Ark. Code Ann. §11-9-702 (a)(4) is not applicable to the present motion.

Rule 099.13 of the Commission provides, in pertinent part:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the 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.

In the instant claim, the evidence preponderates that the claimant has failed to respond to pleadings filed by respondents to dismiss his claim. Further, the claimant has failed to respond to notices and correspondence forwarded by the Commission to his last known address regarding activity in his claim. Likewise, the claimant failed to appear for the scheduled hearing on the Dismissal Motion filed by the respondents. I therefore find the Motion to Dismiss Without

Prejudice should be and is herein granted.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE