

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F609837**

**JOSH FROST, EMPLOYEE**

**CLAIMANT**

**TRAVEL INN, EMPLOYER**

**RESPONDENT**

**FIRSTCOMP INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION AND ORDER OF DISMISSAL FILED APRIL 3, 2007**

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant filed a Form AR-C with the Commission on September 6, 2006. The claimant sent a letter to the Commission requesting a hearing on his claim, which was received on October 16, 2006. The file was assigned to the Legal Advisor Division and the claimant returned a Legal Advisor Claimant Questionnaire on October 27, 2006, indicating that he was willing to mediate. The respondents returned a Legal Advisor Preliminary Notice on November 6, 2006, indicating that respondents were not willing to mediate. Subsequently, the file was assigned to an Administrative Law Judge and on November 27, 2006, Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties. The claimant failed to file a response to the Prehearing Questionnaire and the file was returned to the Commission's general files on January 9, 2007. By letter dated January 18, 2007, respondents requested that the claim be dismissed for lack of prosecution. The Commission gave notice to the claimant of the respondents' request for dismissal by letter dated January 29, 2007, sent via certified mail and first-class mail, which was received by claimant, as evidenced by the certified mail return

receipt signed by the claimant dated January 30, 2007. The claimant was warned therein that failure to respond may result in a dismissal of his 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 on February 28, 2007, and was received by claimant, as evidenced by the certified mail return receipt signed by the claimant dated March 1, 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 March 28, 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 appear and 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.**

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**BARBARA WEBB**  
Administrative Law Judge