

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600034

MICHAEL E. GATHRIGHT, EMPLOYEE

CLAIMANT

WEYERHAEUSER, SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JANUARY 23, 2007

Hearing held before HONORABLE S. DALE DOUTHIT, ADMINISTRATIVE LAW JUDGE, on November 14, 2006, at El Dorado, Union County, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by HON. LEE MULDROW, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 2d 287 (2004).

After review of the Commission's file, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C on January 3, 2006 alleging a head injury on December 14, 2005.

A review of the Commission's file shows the claim was assigned to this Administrative Law Judge in May of 2006. On May 8, 2006, this ALJ sent claimant a prehearing questionnaire that was to be returned to the Commission by May 28, 2006. On June 7, 2006, this ALJ sent claimant a letter advising he had not responded to the prehearing questionnaire and had

Gathright/F600034

another seven days to do so or the file would be returned to the Commission's general files.

(Comm. X-1) Upon failure of claimant to respond again, the claim was sent back to the Commission's general files on June 14, 2006.

On August 24, 2006 the respondents filed a Motion to Dismiss this claim for lack of prosecution. This ALJ sent a copy of the Motion to Dismiss to claimant with a letter advising the claimant to respond within ten (10) business days. (Comm. X-2) To date, there has been no reply to the Motion and the claimant failed to appear at the hearing.

A hearing notice was sent to the claimant by certified and regular mail on September 13, 2006 at his last known address.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):

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 within limitation periods specified in subdivisions (a)(1)-(3) of this section

Rule 13:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and

Gathright/F600034

such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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.

(Effective March 1, 1982)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant failed to appear at the initial hearing pursuant to Rule 13, or respond to pending motions; as such, the claimant is wholly in default.

I find the claimant has had adequate time to investigate this claim and respond to the Notices.

At the request of the respondents, this case is hereby dismissed, without prejudice, for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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