

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700805

SAMUEL GENNA	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 18, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant was pro se.

Respondent represented by SUSAN FOWLER, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the respondents' Motion to Dismiss on October 11, 2007, in Fort Smith, Arkansas.

The respondents filed a Motion to Dismiss with the Commission on July 25, 2007, setting forth that the claimant has failed to prosecute his claim since the filing of his AR-C on January 24, 2007, as well as failing to comply with requests for discovery by the respondents. A letter was sent to the claimant certified mail on August 2, 2007, notifying him of the respondents' Motion and giving him ten days in which to respond to the Motion. The letter sent to the claimant was returned to the Commission indicating that it was unclaimed setting forth that attempts to deliver were made on August 3, 11, and 21 of 2007. An order was entered by the Commission granting the respondents' Motion and dismissing the claimant's claim without prejudice on August 29, 2007. By letter from the respondents dated August 16, 2007, and received by the

Commission on August 17, 2007, the respondents requested that a hearing be held on their Motion to Dismiss in accordance with Ark. Code Ann. §11-9-702(a)(4) and Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W.3d 287 (2004). A letter was sent to the respondent as well as to the claimant setting a hearing date for the respondents' Motion to Dismiss. This letter is dated September 11, 2007, setting the Motion to Dismiss hearing for October 11, 2007. The claimant's letter was sent by certified mail. The claimant's letter was returned to the Commission indicating that it was unclaimed setting forth that attempts to deliver were made on August 30, 2007, September 5 and 15, 2007.

On October 11, 2007, a hearing was held on the respondents' Motion to Dismiss. This hearing was scheduled for 1:00 p.m. and by 1:20 p.m. the claimant had not appeared. It was noted in the file that the claimant's notice had been returned indicating that it was unclaimed. The respondents again requested that their Motion to Dismiss be granted due to the claimant's failure to pursue his claim and failure to comply with discovery.

After full consideration of the respondents' Motion to Dismiss and other matters in the file it is found that the respondents' Motion should be granted and this claim should be dismissed pursuant to Rule 13 without prejudice.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE