

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604099

LAURA GOODMAN, EMPLOYEE

CLAIMANT

**WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**CLAIMS MANAGEMENT, INC. (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 17, 2007

Hearing conducted before Administrative Law Judge DALE DOUTHIT on May 22, 2007, in Little Rock, Pulaski County, Arkansas.

The unrepresented claimant failed to appear at the hearing.

The respondents were represented by Ms. Susan M. Fowler, 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.3d 287 (2004).

After review of the Commission's file and full hearing, I find the Motion should be granted without prejudice.

STATEMENT OF THE CASE

The claimant sustained an admittedly compensable injury on January 19, 2006, for which the respondents paid some benefits. Subsequently, the claimant filed a Form AR-C with the Commission through her attorney, Michael White, requesting additional benefits in April of 2006.

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The claimant requested and was granted a Change of Physician Order from Dr. Antoon to Dr. Tucker by Ms. Pat Capps Hannah on June 7, 2006. On June 23, 2006, respondents filed an appeal of the Change of Physician Order alleging Dr. Tucker's office was too far away from the claimant's residence and requested a new doctor be appointed. A prehearing conference was conducted to set a hearing regarding the change of physician and a Prehearing Order was entered on July 26, 2006. Both parties agreed to submit joint stipulations and briefs on the issue of whether the Change of Physician Order was reasonable with a deadline of October 5, 2006, for briefs to be submitted to the Administrative Law Judge. Prior to the brief deadline, the parties submitted an Agreed Order setting aside the Commission's June 7, 2006 Change of Physician Order. Thereafter, claimant's counsel petitioned for and received an Order allowing him to withdraw as counsel of record for the claimant on September 13, 2006.

No other action was taken by the claimant to pursue her claim after June of 2006 and on March 13, 2007, respondents filed a Motion to Dismiss for Want of Prosecution. (RX 1) Respondents served claimant with the Motion to Dismiss by certified mail on March 14, 2007 (RX 1). On March 23, 2007, this Administrative Law Judge sent the claimant a copy of the Motion to Dismiss with a letter advising her to respond in writing within ten business days. (CX 1) The claimant has not responded to the Commission's March 23, 2007 letter. This Administrative Law Judge then sent claimant a notice of hearing for respondents' Motion to Dismiss on

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April 16, 2007, by both certified and regular mail. (CX 2) Claimant signed for the certified notice of hearing on April 17, 2007 (CX 3); however, the claimant still failed to appear at the scheduled May 22, 2007 hearing as recited in the notice of hearing.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her case but she has failed to respond to written notices and failed to appear at the scheduled hearing. The claimant has not requested a hearing within the last six months.

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 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 and full hearing, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the initial hearing pursuant to Rule 13.
4. The claimant has failed to prosecute her claim.

At the request of the respondents and after hearing, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge