

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606793

RICKY J. GRAHAM, EMPLOYEE	CLAIMANT
TRANSYSTEMS CORP., EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE, CARRIER	RESPONDENT

OPINION FILED JULY 3, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on July 3, 2007 at Little Rock, Arkansas.

The claimant failed to appear at the hearing.

Respondents represented by the HONORABLE MICHAEL MAYTON, 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, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant filed a letter on August 28, 2006 alleging a back injury on May 25, 2006. A review of the Commission's file shows the respondent filed an AR-2 on June 21, 2006 contesting the compensability of the claim as well as jurisdiction. The file was assigned to the Adjudication Division on October 9, 2006 and a prehearing notice was sent to the parties by certified mail on October 10, 2006. The claimant did not respond to the respondents' October 26, 2006 interrogatories and discovery requests and did not respond to the prehearing notice. Therefore the case was returned to general files on November 8, 2006.

_____ On May 22, 2007 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to the claimant. A second notice was sent to the claimant on June 1, 2007 from the Commission.

A hearing notice was sent to the claimant by certified mail on June 21, 2007. On July 2, 2007, the claimant called the Commission and left a message that he had no objection to the dismissal..

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 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 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.

I find the claimant does not wish to pursue this claim..

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 and §11-9-702(a)(4) of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge