

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F302115

**GARY W. HARRIS,
EMPLOYEE**

CLAIMANT

**B & M CONSTRUCTION
COMPANY, INC.,
EMPLOYER**

RESPONDENT

**STATE AUTOMOBILE
MUTUAL INS. CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JUNE 18, 2007,

Pursuant to a hearing conducted June 13, 2007, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. J. Leslie Evitts, III, Attorney at Law, Fort Smith, Arkansas, appearing for the respondents and

Mr. Gary W. Harris, pro se, Arkadelphia, Arkansas, failing to appear.

STATEMENT OF THE CASE

This was a hearing to consider the Motion to Dismiss filed on behalf of the respondents.

A review of the file shows that on February 26, 2003, the Commission received a First Report of Injury and a Form AR-2, filed on behalf of the respondents, and indicating that the claimant had reported that he suffered a back strain when he lifted the door of a truck and his back popped on August 26, 2002. The AR-2 Form indicated that the claimant's first indemnity check was for the period from January 24, 2003, through February 27, 2003.

Thereafter, the Commission received a Form AR-4 dated March 2, 2004, stating that compensation was being suspended as of March 1, 2004, because the claimant was noncompliant in medical treatment. On June 11, 2004, a Form AR-2 was filed on behalf of the respondents, stating that the claim was being controverted because the claimant's current problems are not the result of

his work-related injury. Respondent's counsel stated, at the hearing, that benefits were actually paid from January 3, 2003, through June 10, 2004, and included over \$23,000.00 in medical expenses. Counsel stated that benefits were terminated at that point because of additional information, primarily information obtained by surveillance video evidence.

The file shows that on June 14, 2004, a legal advisor wrote the claimant about the status of his benefits and suggested possible options, including a formal hearing before an administrative law judge. On June 29, 2004, the Commission received a handwritten note from the claimant requesting a hearing for additional benefits. The file indicates that on June 30, 2004, the file was assigned to the same legal advisor for a conference. A note in the file later indicates that the attempt to set up a legal advisor conference or a mediation conference failed and the legal advisor division was requesting that the file be assigned to an administrative law judge for a hearing.

A prehearing conference was scheduled for October 11, 2004, by the administrative law judge and notice of the conference was provided to the parties on September 14, 2004. At claimant's request, the telephone prehearing conference was rescheduled for November 15, 2004. On October 22, the Commission received notice from Ms. Shannon Muse Carroll, Attorney at Law, Hot Springs, Arkansas, that she represented the claimant and would be available for the telephone prehearing conference. A Form AR-C from claimant's counsel requested additional indemnity and medical benefits, rehabilitation benefits, and an attorney's fee. On October 28, 2004, the Commission received notice that Mr. J. Leslie Evitts, III, Attorney at Law, Fort Smith, Arkansas, represented respondents. The conference was rescheduled for November 29, 2004, at the request of claimant's counsel.

The response to the prehearing questionnaire filed on behalf of the claimant indicated that his August 20, 2002, injury was a reoccurrence of a previously compensable low back injury which occurred July 8, 1999, and that he requested additional benefits because of his injury. The response to the prehearing questionnaire filed on behalf of the respondents indicated that the requested medical treatment was not reasonably necessary in connection with his compensable injury and that the treatment sought by the claimant was neither authorized nor reasonably necessary. The prehearing order dated November 29, 2004, indicated that the parties stipulated to a compensable back injury and initial payment of benefits which were terminated in June, 2004. The order indicated that additional discovery was to be undertaken, including the claimant's deposition, and that the file would be returned to general files. On November 30, 2004, correspondence to counsel specified that respondents were to state the exact bases for termination of benefits in June, 2004.

The file shows no other activity until October 24, 2006, when a Motion to Withdraw as Counsel was filed by counsel for the claimant. On November 17, 2006, the Commission entered an order granting counsel's request and Ms. Carroll was received as Attorney of Record for the claimant.

On April 25, 2007, the Commission received a Motion to Dismiss filed on behalf of the respondents. A hearing was scheduled on the Motion for June 5, 2007, and Notice of the Hearing was sent to the parties, including the claimant, by certified and regular mail directed to his last known address on April 27, 2007. At the request of respondent's counsel, the hearing was rescheduled for June 13, 2007, and Notice of the change in schedule was sent to the claimant by certified and regular mail directed to his last known address.

The claimant did not respond to the Motion and failed to appear at the hearing. Accordingly, it appears that the claimant has abandoned his claim for additional benefits, that the Motion should be granted, and that the claim for additional benefits should be, and it is hereby, dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge