

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601980

THOMAS L. HATCHER, **EMPLOYEE**

CLAIMANT

GEORGIA PACIFIC CORPORATION, **EMPLOYER**

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT, INC., **CARRIER**

RESPONDENT

OPINION FILED OCTOBER 10, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on October 5, 2007 at Monticello, Arkansas.

Claimant and attorney the HONORABLE BILLY HUBBELL failed to appear at the hearing.

Respondents represented by the HONORABLE ANDREW IVEY, 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 an AR-C on August 18, 2006 for a back injury on February 17, 2006. A review of the Commission's file shows this claim was accepted as compensable and all appropriate benefits were paid (medical expenses, temporary total disability benefits until the healing period ended on July 2, 2006 and a 6% impairment rating to the body as a whole).

In response to the AR-C, a prehearing notice was sent to the parties on September 21, 2006. The claimant failed to file a prehearing questionnaire and exhibits so the case was returned to general files on October 20, 2006. There has been no further activity in the file.

_____ On August 23, 2007 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to claimant's attorney. The Commission's letter of August 28, 2007 established a deadline for a reply. A telephone conference call on October 4, 2007 with Mr. Billy Hubbell and Ms. Susan Fowler confirmed that the claimant had no objection to the dismissal. Mr. Hubbell's letter of October 4, 2007, received after the hearing, also shows that the claimant consented to the dismissal.

A hearing notice was sent to the claimant (and her attorney) by certified mail on September 20, 2007.

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 has had adequate time to pursue this claim and respond to the Notices.

At the request of the respondents, and with the consent of the claimant, this case is hereby dismissed without 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