

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603421

DONNA HAYNIE, EMPLOYEE

CLAIMANT

**AMERICAN LEGION COLUMBIA POST 3,
EMPLOYER**

RESPONDENT

**TRANSPORTATION INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED AUGUST 6, 2007

Hearing conducted before Administrative Law Judge DALE DOUTHIT on July 10, 2007, in Texarkana, Miller County, Arkansas.

The unrepresented claimant failed to appear at the hearing.

The respondents were represented by Mr. Frank B. Newell, 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 filed an AR-C in this matter on March 21, 2006, which alleged head and other injuries to have occurred on July 9, 2004. The Commission file reflects that after the AR-C filing, no other action was taken by the claimant. Respondents filed their first Motion to Dismiss on December 7, 2006, with the Commission due to claimant's failure to prosecute her claim. Claimant never

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responded to the first Motion to Dismiss in writing, but did appear at the February 6, 2007, hearing regarding the first Motion to Dismiss.

At the February 6, 2007, hearing claimant appeared and requested her claim not be dismissed. The transcript from the February 6, 2007, hearing has been incorporated herein by reference. By Order dated April 17, 2007, this Administrative Law Judge denied respondents' first Motion to Dismiss and in said Order the claimant was instructed to file a prehearing response within twenty days of the Order. The Commission's Order dated April 17, 2007, is incorporated by reference herein. The claimant never filed a response to the prehearing questionnaire as ordered by this Administrative Law Judge, and the claim was returned to the Commission's general files.

On May 14, 2007, respondents filed a second Motion to Dismiss and this Administrative Law Judge sent the claimant a copy of the Motion on May 29, 2007, with instructions to file an answer within ten business days. (CX1) Claimant never responded to the second Motion to Dismiss. This Administrative Law Judge then sent the claimant a Notice of Hearing regarding the second Motion to Dismiss on June 14, 2007, by both certified and regular mail. (CX2) The certified Notice of Hearing was signed for by the Haynie household on June 15, 2007. (CX3) The Notice of Hearing set the second Motion to Dismiss for July 10, 2007, in Texarkana, Arkansas, however the claimant failed to appear.

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

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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 July 10, 2007, 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