

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400952

EDWARD HIGHSMITH, EMPLOYEE	CLAIMANT
PILGRIM'S PRIDE, SELF-INSURED EMPLOYER	RESPONDENT
GALLAGHER BASSETT, TPA	RESPONDENT

**OPINION FILED MAY 7, 2007**

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on February 28, 2007 at El Dorado, Union County, Arkansas.

Claimant did not appear at the hearing.

Respondents represented by HON. NORWOOD PHILLIPS, Attorney at Law, El Dorado, 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. ed 287 (2004).

After review of the Commission's file, I find the Motion should be granted.

**STATEMENT OF THE CASE**

An AR-C was originally filed with the Commission in this claim on 2/3/04. The AR-C listed a date of injury as 10/23/03, and alleged back, neck and shoulder injuries. The AR-C listed George Ivory as claimant's attorney. On November 21, 2005 a prehearing conference was conducted, and the parties stipulated the claimant had sustained compensable back and neck injuries on 10/23/03, and that respondents had paid

Highsmith/F400952

some benefits.

The parties agreed at that prehearing conference to litigate various additional benefits the claimant may or may not be entitled, and set a full hearing for 1/24/06. Subsequently, the parties decided to not have a full hearing and requested a joint petition be approved by the Commission. On March 8, 2006, a joint petition hearing was scheduled and the parties appeared; however, this Administrative Law Judge was advised by Attorney George Ivory that his client had decided not to go through with the joint petition. The claim was then taken off the commission's docket for the joint petition.

On 3/28/06, Attorney George Ivory filed a motion to withdraw as counsel and said motion was granted by the Full Commission on 4/12/06. (Com. Ex. 1) Respondents then filed their first motion to dismiss on 5/26/06. By order dated 6/15/06, this Administrative Law Judge denied respondents first motion to dismiss to allow claimant time to seek new counsel or talk to a legal advisor. (CX-2)

Thereafter, the claimant made no effort to prosecute his claim with the Commission. On October 24, 2006, respondents filed a second motion to dismiss for lack of prosecution. This Administrative Law Judge forwarded claimant a copy of the respondents' second motion to dismiss with a cover letter advising the claimant to respond to the motion within ten (10) business days. (CX-3) The claimant again failed to respond.

A hearing was set for February 28, 2007, on respondents' second motion to dismiss, and this Administrative Law Judge sent out a notice of said hearing to claimant

Highsmith/F400952

by both certified and regular mail. (CX-4) The notice sent by regular mail was never returned to the Commission, and the certified mail receipt shows that the certified notice was received by the Highsmith household on 12/5/06. (CX-5)

Though adequately notified, claimant failed to appear at the February 28, 2007 hearing and failed to respond to any of the motions or notices.

A review of the evidence shows the claimant has had ample opportunity to pursue his case but he 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, 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.
3. The claimant failed to appear at the 2/28/07 hearing.
4. Claimant has failed to prosecute his 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.

---

S. DALE DOUTHIT  
Administrative Law Judge