

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F604793**

**KERRY HOLLIS**

**CLAIMANT**

**LABOR READY CENTRAL, INC.  
(SELF-INSURED)**

**RESPONDENT**

**ORDER AND OPINION FILED FEBRUARY 6, 2007**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondent represented by the JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was held to determine whether the above claim should be dismissed for lack of prosecution. The claimant was notified of the hearing by certified mail and regular mail. The certified card has not been received nor has the regular mail notice been returned.

The hearing was scheduled on Respondents' Motion to Dismiss for Lack of Prosecution filed on November 27, 2006, pursuant to Rule 099.13 of the Arkansas Workers' Compensation Commission and Ark. Code Ann. §11-9-702(d) or (a)(4). The claimant failed to appear at the hearing.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

## **STATEMENT OF THE CASE**

A Form 1 was filed on behalf of the claimant on April 17, 2006, indicating the claimant was contending a sprained ankle as a result of a motor vehicle accident. The claim has been denied in its entirety. The claimant has not requested a hearing within six months.

The respondents filed a motion to dismiss and the hearing notice was mailed on December 21, 2006, in accordance with *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (2004).

## **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue his case but 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 099.13.  
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 dismissal hearing pursuant to Rule 099.13.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**