

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F511057

TERRY L. JACKSON, EMPLOYEE

CLAIMANT

**FRED'S INC.,
EMPLOYER**

RESPONDENT

**ACE AMERICAN INSURANCE COMPANY,
CARRIER**

RESPONDENT

OPINION FILED JULY 17, 2007

Hearing before Administrative Law Judge O. Milton Fine II on June 19, 2007 in Harrison, Boone County, Arkansas

Claimant, *pro se*, did not appear.

Respondents represented by Mr. Michael Stiles, Attorney at Law, Little Rock, Arkansas.

BACKGROUND

This matter comes before the Commission on Respondents' motion to dismiss. A hearing on the motion was conducted on June 19, 2007, in Harrison, Arkansas. The Claimant, *pro se*, did not appear. Respondents were represented by Mr. Michael Stiles, Attorney at Law, of Little Rock, Arkansas.

This claim was originally scheduled for a hearing on October 17, 2006 regarding (1) whether Claimant sustained a compensable mid-back injury; (2) whether Claimant is entitled to temporary total disability benefits from September 8, 2005 to a date yet to be determined; and (3) whether Claimant is entitled to attorney's fees. On September 20, 2006, Claimant wrote a letter to Administrative Judge Mark Churchwell asking that the hearing be cancelled due the receipt of additional evidence that necessitated additional discovery and/or medical evidence

before Claimant could proceed to a hearing. Judge Churchwell on September 28, 2006 sent a letter to the parties that cancelled the hearing and returned the file to the Commission's general files. Claimant's counsel on October 5, 2006, filed a motion to withdraw from the case. The Full Commission granted the motion on October 25, 2006.

No further activity occurred in the case until Respondents on May 4, 2007 filed a Motion to Dismiss and a brief in support thereof. These pleadings were received as part of Commission Exhibit 1. Therein, Respondents asked the Commission to dismiss the instant claim under Ark. Code Ann. § 11-9-702(a)(4) and AWCC R. 099.13. By certified letter on May 14, 2007, I informed Claimant that he had ten (10) days to respond to the motion. This letter is part of Commission Exhibit 1. While Claimant signed for the letter, as evidenced by a copy of the certified mail receipt that is part of Commission Exhibit 1, no response was forthcoming from him. As this exhibit also indicates, Claimant signed a certified mail receipt for the Notice of Hearing. However, Claimant did not appear at the hearing.

At the hearing, Respondents submitted that Claimant initially made a timely, bona fide request for a hearing in the case. However, they argued that since the hearing request was withdrawn and the file returned to the Commission's general files, Claimant has taken no action on this claim—and over six (6) months have elapsed. They submit that since the withdrawal of counsel, Claimant has not filed anything in connection with the claim and has not contacted Respondents' counsel, even after counsel sent Claimant a letter on May 4, 2007 asking that he contact them concerning whether he wished to proceed. For these reasons, Respondents

argued that dismissal without prejudice was warranted under § 11-9-702(a)(4) and Rule 13.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. No bona fide request for hearing has been made by the Claimant within the last six months.
3. The Claimant has failed to prosecute his claim for more than six months.
4. This claim should be, and hereby is, dismissed without prejudice pursuant to Ark. Code Ann. § 11-9-702 (Repl. 2002) and AWCC R. 099.13.

DISCUSSION

Arkansas Code Annotated § 11-9-702(a)(4) provides as follows:

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.

In addition, AWCC R. 099.13 reads:

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.

See generally Johnson v. Triple T Foods, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996)(discussing § 11-9-702(a)(4) and Rule 13).

The evidence adduced at the hearing clearly shows that Claimant has failed to make a bona fide hearing request within the requisite period and has failed to prosecute his claim. For that reason, Respondents' motion is well-founded and is hereby granted, dismissing this claim without prejudice.

IT IS SO ORDERED.

O. MILTON FINE II
Administrative Law Judge