

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306560

JULIAN K. JONES, EMPLOYEE	CLAIMANT
SOUTHWEST AIRLINES, EMPLOYER	RESPONDENT
CAMBRIDGE INTEGRATED SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED MARCH 21, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on March 19, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant failed to appear either in person or by his attorney, Ms. Emily S. Paul, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. J. Matthew Mauldin, Roberts Law Firm, Attorneys-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 19, 2007, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

The immediate claim concerns an accident and injury occurring on or about June 14, 2003. Respondents apparently accepted the injury to claimant's right shoulder as compensable and have paid various benefits prior to controverting claimant's entitlement to additional benefits.

A summary of the procedural history is warranted. The claimant, by and through his attorney, Ms. Emily S. Paul, filed a Commission Form AR-C on September 1, 2004, requesting additional benefits. During the prehearing process,

it was agreed that the benefits in dispute were less than \$2,500.00. Accordingly, the claim was referred for a mandatory mediation conference pursuant to Commission Rule 099.26. A failed mediation conference was conducted on December 28, 2004, at which time the claim was reassigned to the Adjudication Division to determine claimant's entitlement to additional benefits, if any. A second prehearing questionnaire was sent to the parties and a prehearing conference was scheduled for February 14, 2005. At the request of claimant's attorney, the prehearing conference was cancelled and the claim returned to the Commission's general files. Another hearing request was made by the claimant on February 11, 2005, and the claim, again, reassigned to an Administrative Law Judge, at which time a prehearing conference was scheduled for March 14, 2005. In response to the hearing request, respondents filed a Commission Form AR-2, controverting additional benefits while maintaining that the claimant was not disabled pursuant to A.C.A. §11-9-519. Following the filing of amended prehearing responses, claimant's attorney, again, requested that the claim be returned to the Commission's general files. The prehearing conference was cancelled and the claim returned to general files on March 11, 2005. No further action was taken by the claimant. On February 8, 2007, respondents filed a Motion to Dismiss, together with a Brief in Support of its Motion to Dismiss the claim for want of prosecution.

The claim was then reassigned to this Administrative Law Judge for a hearing on the Motion. By letter dated February 12, 2007, the claimant was asked to

respond to the Motion. No response was received. Accordingly, a hearing on the Motion was scheduled for March 19, 2007. Notice of the hearing was sent Certified Mail – Return Receipt Requested to both the claimant, as well as claimant’s attorney and were received as confirmed by Return Receipts showing dates of delivery of March 7, 2007, and March 13, 2007, respectively. Again, claimant failed to appear at the scheduled hearing. The subject of the hearing was the Motion to Dismiss the claim. Respondents introduced documentary evidence in support of its Motion.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. On or about September 1, 2004, the claimant filed a claim for additional benefits related to a June 14, 2003, injury.
3. The claimant has failed to prosecute his claim.
4. Respondents have controverted claimant’s entitlement to all additional benefits.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(d) and Commission Rule 099.13.

DISCUSSION

_____ Rather than conduct a further analysis of the record in this cause, suffice it

to say that the record reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond, as well as to appear at the scheduled hearing would result in the dismissal of his claim. A hearing was scheduled at respondents' request pursuant to the decision in *Dillard v. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

I feel compelled to further point out that on the date of the scheduled hearing, claimant's attorney advised that she would not attend the hearing on the pending Motion to Dismiss. Claimant's attorney asserted that she had spoken with the claimant concerning the Motion and was authorized to state that the claimant had no objection. At the hearing, respondents' attorney was questioned concerning whether the requested dismissal be with or without prejudice. The request was for a dismissal without prejudice.

After full consideration of the facts, issues, and the law, and with notice of the hearing being received by the claimant, without objection thereto, it is hereby determined that this claim be, and it is, hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of this claim if filed within the statutory time limits imposed by Arkansas Law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge