

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110789

BOBBY LAMB, EMPLOYEE

CLAIMANT

DOLLARWAY SCHOOL DISTRICT, EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER

RESPONDENT

OPINION FILED FEBRUARY 23, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 16, 2007, at Pine Bluff, Jefferson County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE Carol L. Worley, 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, I find the Motion should be granted.

STATEMENT OF THE CASE

This claim, file #F110789, was established for a right knee and rib injury resulting from an altercation with a student on September 5, 2001. The claim was accepted and paid until October 2001. A hearing was conducted December 17, 2004 to determine the claimant's entitlement to additional medical treatment for the knee, as well as the compensability of high blood pressure, mental illness, temporary total disability benefits, and the authorization of Dr. Davis. Ultimately, this claim was denied in an Opinion filed March 14, 2006 by the Full Commission. No appeal was taken from this decision. On November 13, 2006 the respondents filed a Motion to Dismiss this

claim for lack of prosecution with a certificate of service to claimant. The claimant filed an objection, noting that he still required medical treatment.

FINDINGS AND CONCLUSIONS

A review of the Commission's file shows the claimant has had ample opportunity to pursue his case. The evidence shows the claimant's treatment for the last several years has involved his back, not his knee or ribs. The claimant's back injury claim, file # F300122, was dismissed by Judge Barbara Webb in an opinion dated October 3, 2006. The claimant has not requested a hearing for his knee injury 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 pursuant to Ark. Code Ann. §11-9-702.

I find the claimant has had adequate time to pursue this claim for additional treatment to his knee but hearings and appeals have been exhausted.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to §11-9-702(a)(4) of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge