

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F210773**

**JANA DIANE LONG,  
EMPLOYEE**

**CLAIMANT**

**WAL MART STORES, INC.,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**CLAIMS MANAGEMENT, INC.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JULY 2, 2007,**

Pursuant to a hearing conducted June 26, 2007, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. J. Matthew Mauldin, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This was a hearing to consider the second Motion to Dismiss filed on behalf of the respondents.

The claimant suffered a compensable to her right eye December 5, 2001, during her employment as a cashier for the respondent employer at its Bryant, Arkansas, store. This injury was accepted as compensable by the respondents who initiated payment of benefits.

Claimant's former counsel filed a Form AR-C October 1, 2002, requesting benefits, including a Change of Physician and all initial and additional benefits provided on the form.

On October 18, 2002, the file was referred to the office of the administrative law judge and a telephone conference was scheduled for November 18, 2002. Discovery documents were exchanged, but the conference was cancelled at the request of claimant's former counsel, who pointed out that he had not requested a hearing. The file was then returned to general files.

In April, 2004, claimant's current counsel notified the Commission that the claimant's previous counsel was retiring from this practice and was referring the claimant's file to him for additional proceedings.

No further action occurred in the file until February, 2005, when claimant's counsel requested a hearing to assess the claimant's permanent anatomical impairment. A telephone prehearing conference was scheduled for March 22, 2005. On February 23, 2005, claimant's counsel wrote to withdraw the request for a hearing because the claimant had received an impairment rating. The March 22 prehearing conference was cancelled and the file was returned to general files.

On March 1, 2005, claimant's counsel requested a hearing to address the issue of permanent impairment and, also, benefits under Ark. Code Ann. §11-9-505(a). After a telephone prehearing conference, a hearing was scheduled for May 10, 2005, to address the claimant's request for an attorney's fee on the impairment rating and benefits pursuant to Ark. Code Ann. §11-9-505(a). However, this hearing was cancelled and the file was returned to general files, pursuant to correspondence indicating that the parties were jointly requesting a continuance.

The file does not reflect additional activity until October 2, 2005, when the first Motion to Dismiss was filed on behalf of the respondents. At a hearing on the Motion on October 31, 2005, claimant's counsel advised that the claimant alleged that there were unpaid medical expenses and medical mileage. Respondent's counsel indicated a willingness to resolve the current dispute without the necessity of additional proceedings. The Motion to Dismiss was denied by an Opinion dated December 4, 2006.

On June 4, 2007, the Commission received the second Motion to Dismiss filed on behalf of the respondents, alleging that the claimant has taken no action to prosecute her claim since the

previous hearing. Claimant's counsel again appeared and stated that the claimant has alleged that medical mileage and a medical bill remains unpaid. Accordingly, the claimant is ordered forthwith to submit the specific claim for additional benefits to the respondents and to the Commission in order that this issue may be resolved. Because issues appear to remain in dispute between the parties, the claim should not be dismissed. However, claimant is cautioned to proceed forthwith to prosecute any claim for additional benefits that she believes she may be entitled to.

Accordingly, the Motion to Dismiss should be, and it is hereby, respectfully, denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge