

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611868

JASON O. MCCOY, EMPLOYEE	CLAIMANT
TROTTER TOYOTA, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED OCTOBER 4, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on September 28, 2007 at Little Rock, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, 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

The claimant filed an AR-C on October 27, 2006 alleging a back and groin injury on September 22, 2006. A review of the Commission's file shows the claimant had an opportunity to discuss his claim with the Legal Advisors (see the report dated January 6, 2007). The case was then assigned to the Adjudication Division and a prehearing notice was issued on January 10, 2007. The claimant failed to file a prehearing questionnaire with exhibits so the case was returned to general files on February 6, 2007.

_____ On June 27, 2007, the respondents filed a Motion to Dismiss. The claimant filed an objection on July 18, 2007 and an Order was issued July 20, 2007 denying the Motion.

The prehearing notice was sent out for a second time but once again, the claimant failed to file a prehearing questionnaire with exhibits.

The respondents renewed their Motion to Dismiss this claim. Hearing notices were sent to the claimant's last two addresses by certified and regular mail. The post office returned those notices to the Commission and it appears we have lost contact with the claimant.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

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 failed to appear at the initial hearing pursuant to Rule 13.

I find the claimant has had adequate time to pursue this claim and respond to the Notices.

At the request of the respondents, this case is hereby dismissed with prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge