

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210797

TODD MINOR, EMPLOYEE	CLAIMANT
SNELL PROSTHETIC & ORTHOTIC LAB, EMPLOYER	RESPONDENT
ZENITH INSURANCE COMPANY, 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, *pro se*, failed to appear.

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.

This claim concerns an alleged injury as the result of occupational exposure to carcinogens in the workplace which was first claimed on September 17, 2002. Respondents have controverted the claim in its entirety, maintaining that the alleged injury did not arise out of and during the course of claimant's employment.

This claim has an unusual procedural history. A summary of the claim history is warranted. A Commission Form AR-C was filed in this claim by claimant's former attorney, Mr. Charles D. Harrison, on October 3, 2002. In response, respondents advised that the claim had been controverted in its entirety. No further

action was taken until on or about September 3, 2004, at which time respondents filed a Motion to Dismiss for want of prosecution. Claimant's attorney promptly objected to the Motion. An Order was filed on September 14, 2004, denying the Motion to Dismiss. No further action was taken by either party. On March 7, 2006, the parties filed a Joint Petition for final settlement of the claim. A Joint Petition hearing was conducted on March 20, 2006. The proposed settlement was denied because the parties failed to comply with the provisions of Ark. Code Ann. §11-9-411. Efforts were made to obtain a waiver of potential subrogation claims from the health insurance providers. The claim was further complicated by notice that Medicare had also paid various benefits to the claimant. Following further delays in efforts at amicably resolving the claim, the claim was ultimately returned to the Commission's general files. Thereafter, the record reflects that the claimant dismissed his attorney of record. No further action was taken by either party until on or about January 30, 2007, at which time respondents filed a second Motion to Dismiss the claim for want of prosecution, together with a Brief in Support of its Motion. By letter dated February 5, 2007, the claimant was advised that his failure to respond to the Motion could result in the dismissal of his claim. No response was received. Thereafter, at respondents' request, a Notice of Hearing was sent February 28, 2007, scheduling the matter for a hearing on March 19, 2007. The subject of the hearing was the Motion to Dismiss the claim. Prior to the hearing, in an undated letter, the claimant advised that he did not intend to pursue his workers'

compensation claim. Again, the claimant failed to appear at the scheduled hearing. 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 October 3, 2002, the claimant filed a claim for benefits alleging an injury resulting from occupational exposure to carcinogens.
3. The claimant has failed to prosecute his claim. The claimant has been advised that his failure to prosecute the claim would result in a dismissal of his claim.
4. Respondents have controverted this claim in its entirety.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4) 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 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). Again,

the claimant failed to appear at the scheduled hearing.

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

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge