

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F607758

JAMES F. MOORE, EMPLOYEE

CLAIMANT

DAMBOLD & WILSON PIPELINE,  
UNINSURED EMPLOYER

RESPONDENT

**Opinion filed July 9, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on June 27, 2007, in Russellville, Pope County, Arkansas.

Claimant who is pro se, failed to appear at the hearing.

Respondents represented by the HONORABLE ANDY CALDWELL, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was held on June 27, 2007, to determine whether the above-referenced matter 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). The records consists of the transcript of the June 27, 2007 hearing, and the exhibits contained therein.

After consideration of the documentary exhibits, I find that the respondent's Motion should be granted.

**STATEMENT OF THE CASE**

On or about July 17, 2006, the claimant filed herein Arkansas Workers' Compensation Commission form AR-C indicating that he sustained an injury on May 11, 2006, while working for the respondent. The claimant indicated that he injured his back

while carrying a twelve inch pipe clamp on his shoulder and claimed entitlement to temporary total disability, medical expenses, and a controverted attorney's fee.

The claimant's attorney, M. Keith Wren, subsequently filed a request for hearing with the Commission and the case was referred to the Honorable Mark Churchwell, who subsequently sent a Preliminary Notice and Prehearing Questionnaire. Subsequently, responses were filed by both parties.

Respondents propounded written discovery upon the claimant on or about September 21, 2006, and on or about October 9, 2006, respondents agreed to a fourteen day extension pursuant to Mr. Wren's request. However, no responses have ever been received.

On or about November 6, 2006, the claimant's attorney wrote the Commission advising that his firm was no longer representing the claimant and an Order was filed November 27, 2006, relieving Mr. Wren as counsel of record.

The claimant has not taken any affirmative action in this case in over six months. Subsequent to Mr. Wren's withdrawal as counsel, the claimant has failed to obtain new counsel or otherwise prosecute his claim. The claimant has also failed to respond to discovery propounded upon him.

On May 15, 2007, the respondent filed a Motion to Dismiss with a certificate of service to the claimant. A second notice was to the claimant on June 6, 2007. To date, there has been no

reply to the Motion.

A hearing notice was mailed to the claimant via certified mail on June 11, 2007. The return receipt reveals that the claimant signed for this Notice on June 16, 2007.

A hearing was held on June 27, 2007, on the respondent's Motion to Dismiss. The claimant failed to appear at the hearing.

### **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 refileing of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 099.13:

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 facts:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. 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.
3. That the motion to dismiss should be granted pursuant to Commission Rule 099.013.

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At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

**IT IS SO ORDERED.**

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CHANDRA HICKS  
Administrative Law Judge

