

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. F313171, F411254 & F405242

FREDERICK ODEN, JR., EMPLOYEE

CLAIMANT

**GEORGIA-PACIFIC CORPORATION,
SELF-INSURED EMPLOYER**

RESPONDENT NO. 1

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION AND ORDER FILED AUGUST 7, 2007

Hearing before Administrative Law Judge Barbara Webb on July 12, 2007, in Monticello, Drew County, Arkansas.

Claimant appeared *pro se*.

Respondents No. 1 represented by Mr. Andrew M. Ivey, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 12, 2007, to determine whether the above-referenced claims should be dismissed for lack of prosecution pursuant to Rule 13, of the Rules of the Arkansas Workers' Compensation Commission.

The claimant sustained a compensable injury on November 24, 2003 (WCC No. F313171), and respondents paid appropriate benefits. The claimant filed a Form AR-C with the Commission on October 25, 2004, alleging a re-injury to his lumbar spine on September 8, 2004 (WCC No. F411254), during performance of a functional capacity evaluation. The respondents' attorney sent a letter to the Commission dated January 5, 2005, denying claimant's claim for additional benefits and requested that file numbers F313171 and F411254 be combined or merged as it is respondents' position that both claims are the same or related to the same injury reported on November 23, 2004. File No. F313171 was assigned to the Legal Advisor Division on January 6, 2005. The claimant returned a Legal Advisor

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Claimant Questionnaire declining mediation which was received on May 13, 2005. Respondents returned a Legal Advisor Preliminary Notice declining mediation which was received May 25, 2005. The file was assigned to an Administrative Law Judge and Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties on July 12, 2005. Claimant's response to the Prehearing Questionnaire was filed on August 1, 2005. Respondents' response to the Prehearing Questionnaire was filed on August 11, 2005, wherein respondents made reference to file No. F411254, which prompted file No. F411254 to be assigned to the Administrative Law Judge on August 12, 2005. The Second Injury Fund filed a response to the Prehearing Questionnaire on August 11, 2005. A prehearing conference was held on October 31, 2005, scheduling a hearing for March 17, 2006. At the hearing on March 17, 2006, the claimant requested a continuance of the hearing and on March 28, 2006, the following Order was entered by the Administrative Law Judge:

_____ On the 17th day of March 2006, appeared before this Commission, the pro se Claimant, Mr. Frederick Oden. Also present were Ms. Susan M. Fowler of Roberts Law Firm, P.A., appearing on behalf of Respondent No. 1, and Mr. David Pake, appearing on behalf of Respondent No. 2. A hearing had been scheduled for said date to determine, in pertinent part, whether the Claimant is entitled to additional benefits related to an alleged injury to the Claimant's low back on or about November 24, 2003. Prior to the taking of evidence, the Claimant represented to the Commission that he was mentally and physically unable to proceed; that he is under the care of a psychiatrist/psychologist, Dr. Brian Babiak, with his first treatment with Dr. Babiak having taken place only one day prior on March 16, 2006; and, that he desired a continuance of the hearing. After full consideration of the facts, issues, and the law, it is hereby determined:

- 1) That the Claimant's motion for a continuance is granted.
- 2) A prehearing telephone conference is hereby set for **Monday, May 22, 2006, at 10:00 a.m.**, at which time a full hearing will be reset.

- 3) That the Claimant is ordered to make available to counsel for Respondent No. 1 and Respondent No. 2 copies of *any and all* medical records, notes, and any other documents related to the Claimant's treatment with Dr. Brian Babiak, including all past and future treatment, and as such treatment occurs.
- 4) That the Claimant is instructed to immediately execute a HIPPA compliant medical release allowing Dr. Babiak to provide the above described records directly to counsel for Respondent No. 1 and Respondent No. 2 as set forth above.
- 5) That counsel for Respondent No. 1 has drafted appropriate HIPPA compliant medical releases which are attached hereto allowing for the release of the records described herein. The Claimant is required to sign and execute the attached medical releases and return them to counsel for Respondent No. 1 and Respondent No. 2 within ten (10) days of the date of this Order.
- 6) That the Claimant is further ordered to provide signed and executed copies of the attached medical releases to Dr. Brian Babiak and to instruct Dr. Babiak to provide, by either U.S. mail or Facsimile, copies of any and all medical records, notes and other documents related to Dr. Babiak's treatment of Claimant directly to counsel for Respondent No. 1 and Respondent No. 2.
- 7) In the event that Dr. Babiak requires an additional or substitute medical release, the Claimant is ordered to execute said release immediately in order to fully comply with the orders set forth above.
- 8) If for any reason, the Claimant ceases his treatment with Dr. Babiak, for any reason, he must immediately notify this Commission, and counsel for Respondent No. 1 and Respondent No. 2. The Claimant is further ordered to notify all parties of any changes in his treating psychiatrist/psychologist, or of any additional treating psychiatrist/psychologist/physician, immediately upon said change and to execute appropriate medical releases for the release of the new psychiatrist/psychologist/physician's records.

The prehearing conference scheduled for May 22, 2006, was rescheduled to June 14, 2006, due to claimant retaining counsel. A prehearing conference was held June 14, 2006, and a hearing was scheduled for September 14, 2006. On September 12, 2006, claimant's attorney requested a continuance and the hearing was rescheduled for November 16, 2006. On November 8, 2006, claimant's attorney requested a continuance of the hearing in order to complete discovery. By

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letter from this Administrative Law Judge dated November 14, 2006, the hearing set for November 16, 2006, was cancelled and the files returned to the Commission's general files.

On April 18, 2007, respondents No.1 filed a Motion to Dismiss for Want of Prosecution in file Nos. F313171 and F411254. Respondents also filed a Motion to Dismiss for Want of Prosecution in file No. F405242 (Form AR-C filed on December 30, 2004, alleging an injury date of January 3, 2003). All three files were assigned to this Administrative Law Judge on April 24, 2007. Respondents assert in its Motion to Dismiss, among other things, that claimant has failed to supply an updated HIPAA compliant medical release and has failed to provide medical records related to his treatment with Dr. Babiak. On April 27, 2007, claimant's attorney filed a response to respondents' Motion to Dismiss. By letter dated April 30, 2007, from this Administrative Law Judge, respondents' Motion to Dismiss was denied and a prehearing conference was scheduled. On May 23, 2007, a prehearing conference was held and a hearing was scheduled on respondents' Motion to Dismiss for June 7, 2007. On May 23, 2007, claimant's attorney filed a Motion for Withdrawal of Counsel and on June 5, 2007, an Order was entered relieving Mr. Kenneth Harper as claimant's attorney of record. A prehearing telephone conference was held on June 6, 2007, and the hearing on respondents' Motion to Dismiss was continued to July 12, 2007.

At the hearing on July 12, 2007, the claimant indicated he still wished to proceed to a hearing on his claim and will cooperate with respondents in providing certain HIPAA compliant medical releases.

Rule 13 of the Rules of the Arkansas Workers' Compensation Commission states, in part, as follows:

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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.

After review of the documentary exhibits filed by respondents and testimony of the claimant at the hearing that he wishes to pursue his claim, respondents' Motion to Dismiss is denied at this time.

A prehearing telephone conference is scheduled for **Tuesday, September 4, 2007, at 11:30 a.m.**

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge