

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707262

CHRIS B. PRY

CLAIMANT

J & J LUMBER CO.

RESPONDENT EMPLOYER

COMMERCE & INDUSTRY INSURANCE CO.

ORDER AND OPINION FILED DECEMBER 20, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on December 14, 2007, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear nor did his attorney, William Moritz.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed October 23, 2007, pursuant to Rule 099.13 of the Commission. A certificate of service was sent to the claimant and his attorney. The claimant's attorney signed for the Notice.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claim was initiated by the filing of an AR-C with the Commission relating to a March 20, 2007, alleged injury. The claimant filed an AR-C on July 19, 2007. Some discovery was initiated; however, the claimant did not respond to discovery requests. The claim has been controverted in its entirety.

The respondents filed a motion to dismiss on October 23, 2007. The Commission sent a letter on November 1, 2007, asking for the claimant's position on the Dismissal Motion and there was no response. The hearing notice was mailed on November 19, 2007, in accordance with *Dillard v. Benton County Sheriff's Office*, 87 Ark App. 379, 192 S.W.3d 287 (2004).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but has not pursued his claim. The claimant has not requested a hearing within the last six months.

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 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 fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant and his attorney failed to appear at the dismissal hearing pursuant to Rule 099.13.

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

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE