

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F302409**

JANE REIS, EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,  
EMPLOYER

RESPONDENT

**OPINION FILED NOVEMBER 15, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on November 14, 2007, in HARRISON, Boone County, Arkansas.

Claimant represented by THE HONORABLE PHILIP WILSON, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by THE HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on November 14, 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 record consists of the transcript of the November 14, 2007 hearing, and the exhibits contained therein.

**DISCUSSION**

The claimant sustained a compensable low back injury on December 30, 2002, while working for the respondent-employer. On March 7, 2003, the claimant filed a Form AR-C with the Commission alleging an injury to her low back and neck during an attempt to move boxes. She requested temporary partial disability, permanent partial disability, medical benefits, and attorney

fees. On March 18, 2003, the employer filed a Form AR-2 accepting treatment for the claimant's low back injury, but it controverted treatment for the claimant's alleged neck injury. Therefore, the respondent paid benefits on the claim through March 1, 2004. Thereafter, the respondents controverted the claimant's low back injury after March 1, 2004, and denied in its entirety the claimant's alleged cervical injury.

A hearing was conducted July 13, 2005, to determine the following issues:

1. Whether the claimant sustained a compensable injury to her cervical spine.
2. Whether the claimant was entitled to medical treatment for her cervical spine.
3. Whether the claimant was entitled to additional medical treatment for her low back.
4. Whether the claimant was entitled to a 9% permanent impairment rating as a result of her cervical spine injury.
5. Whether the claimant was entitled to a controverted attorney's fee.

In an opinion dated October 11, 2005, the Administrative Law Judge found that the claimant had sustained a compensable cervical spine injury, for which she was entitled to reasonable and necessary medical treatment, and an 8% permanent impairment rating to the whole person for her cervical injury. The Administrative Law Judge also found that the claimant was entitled to additional medical treatment for her compensable back injury and a controverted attorney's fee.

The respondent appealed to the Full Commission. In an Opinion dated March 23, 2006, the Full Commission affirmed in part, and reversed in part, the decision of the Administrative Law Judge. The Full Commission found that the claimant proved her entitlement to additional medical treatment for her compensable back injury of December 30, 2002. However, the Full Commission found that the claimant failed to prove she sustained a compensable injury to her cervical spine on December 30, 2002. As a result, the Full Commission further found that the award of benefits and compensation for this injury should be reversed.

The claimant appealed this decision to the Arkansas Court of Appeals, and in an opinion dated December 6, 2006, the Court of Appeals affirmed the Opinion of the Full Commission.

In a letter dated January 17, 2007, the Arkansas Court of Appeals denied the claimant's Petition for Rehearing.

There has been no further activity by the claimant on the claim. On July 30, 2007, the respondent filed a Motion to Dismiss with certificate of service to all of the parties.

On August 3, 2007, the Commission sent Notice to the claimant's attorney and the claimant of the pending Motion and of a deadline for filing a response to this Notice. To date there has been no response from the claimant or her attorney to this Notice.

Therefore, on August 28, 2007, the Commission sent a Notice

to the respondent, the claimant and her attorney advising that the matter had been set for a hearing on the respondent's Motion to Dismiss for September 26, 2007, at 2:00 p.m., in Russellville, Arkansas. The parties failed to appear for this hearing.

In another letter dated October 9, 2007, the Commission sent Notice to the claimant, her attorney, and the respondent that this matter was rescheduled for a hearing on November 14, 2007, 11:30 a.m., in Harrison, Arkansas.

A hearing was in fact held on November 14, 2007, on the respondents' Motion to Dismiss. The respondent appeared at the hearing through its attorney. However, the claimant and her attorney both failed to appear at said hearing.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 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 had ample opportunity to pursue this case but no action has been taken by the claimant in furtherance of his claim. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
3. That the respondent's Motion to Dismiss should be granted without prejudice pursuant to Commission's Rule 099.13 and Ark. Code Ann. § 11-9-702.

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**ORDER**

Based upon my foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. As a result, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 099.13 and Ark. Code Ann. § 11-9-702.

**IT IS SO ORDERED.**

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CHANDRA HICKS  
Administrative Law Judge