

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F606271**

**DANNY L. ROAM, EMPLOYEE**

**CLAIMANT**

**JUSTICE FARMS, INC.,  
EMPLOYER**

**RESPONDENT**

**AMERICAN INTERSTATE INS. CO.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED NOVEMBER 26, 2007**

Hearing conducted before Administrative Law Judge S. Dale Douthit on October 29, 2007, in Little Rock, Pulaski County, Arkansas.

The claimant and his attorney, Mr. Philip M. Wilson, failed to appear.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine whether or not this claim 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).

After review of the Commission's file, the full hearing, and a review of the hearing record, I find the motion should be granted.

**STATEMENT OF THE CASE**

The claimant filed an AR-C form with the Commission on June 14, 2006, through Attorney Philip M. Wilson alleging a compensable back injury.

Respondents first filed a motion to dismiss for lack of prosecution on May 7,

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2007, with a certificate of service to claimant's attorney, Mr. Philip M. Wilson. The claimant never responded to the motion to dismiss in writing. On May 10, 2007, this administrative law judge sent the claimant a copy of respondents' motion to dismiss with a cover letter advising claimant to file a response within ten business days. Still, with no response from the claimant, a hearing was set for July 17, 2007, at 11:30 a.m. and a notice of said hearing was sent to the claimant by both certified and regular mail. On July 16, 2007, claimant's counsel advised that an offer of settlement had been made by respondents' counsel and that he was unable to locate his client. On July 16, 2007, respondents' counsel agreed to withdraw his motion to dismiss and the claim was returned to the Commission's general files at that time.

Respondents then filed a second motion to dismiss for lack of prosecution on August 27, 2007, with a certificate of service to claimant's attorney, Mr. Philip M. Wilson. The claimant never responded to the motion to dismiss in writing. On August 30, 2007, this administrative law judge sent the claimant a copy of respondents' motion to dismiss with a cover letter advising claimant to file a response within ten business days (Com. Ex. 1). Still, with no response from the claimant, a hearing was set for October 29, 2007, at 10:45 a.m. and a notice of said hearing was sent to the claimant by both certified and regular mail (Com. Ex. 2). Proof of claimant's receipt of the certified notice of hearing was introduced into the hearing

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record on October 29, 2007, as Com. Ex. 3, and shows claimant received the certified notice on September 18, 2007. The claimant failed to appear at the scheduled hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A review of the evidence shows that claimant has had ample opportunity to pursue his case but he has failed to respond to written notices and failed to appear at the scheduled hearing.

There are two provisions for dismissal of claims:

A.C.A. § 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 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

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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 failed to prosecute his claim.
- 3) The claimant failed to appear at the initial hearing pursuant to Rule 13.

At the request of the respondents and after a full hearing, this case is hereby dismissed without prejudice for failure to prosecute pursuant to A.C.A. § 11-9-702 and Rule 99.13 of the Arkansas Workers' Compensation Commission.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb