

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511517

LILLIAN A. ROBINSON, EMPLOYEE	CLAIMANT
RED ROOF INNS, INC., EMPLOYER	RESPONDENT
FIDELITY & GUARANTY INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 9, 2007

Hearing conducted before Administrative Law Judge DALE DOUTHIT on May 2, 2007, in Little Rock, Pulaski County, Arkansas.

The unrepresented Claimant failed to appear at the hearing.

The Respondents were represented by HONORABLE ERIC NEWKIRK, 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.3d287 (2004).

After review of the Commission's file and Full Hearing, I find the Motion should be granted without prejudice.

STATEMENT OF THE CASE

The claimant filed an AR-C form with the Commission on October 25, 2005, alleging facial and mental injury while cleaning rooms for the respondent employer on October 14, 2005. The Commission file reflects the claimant has taken no other action to prosecute her claim since the filing of the AR-C.

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On February 23, 2007, respondents filed a Motion to Dismiss for Failure to Prosecute and requested a hearing on said motion. Respondent's Motion to Dismiss contained a certificate of service upon the claimant. Upon receiving the Motion to Dismiss, this ALJ also sent the claimant a copy of the Motion to Dismiss with a cover letter advising the claimant to respond within 10 business days of February 28, 2007 (CX1). After receiving no response from the claimant by March 27, 2007, this ALJ set the respondent's Motion to Dismiss for a hearing on May 2, 2007. The notice for the hearing was sent to the claimant by both certified and regular mail on March 27, 2007. This claim came on for hearing to consider respondent's motion to dismiss on May 2, 2007, and the claimant failed to appear or respond in any way.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her case but she has failed to respond to written notices and failed to appear at the scheduled hearing. 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 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 and after the full hearing, 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 failed to appear at the initial hearing pursuant to Rule 13.

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4. The claimant has failed to prosecute her claim.

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Ark. Code Ann. § 11-9-702 and Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge