

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F701052

DELORES SANDERS, EMPLOYEE **CLAIMANT**

**JOHNNY B'S GRILL,
EMPLOYER** **RESPONDENT**

**FIRSTCOMP INSURANCE CO.,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED DECEMBER 27, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit on October 30, 2007, in El Dorado, Union County, Arkansas.

The unrepresented claimant failed to appear.

The respondents were represented by Ms. Cynthia E. Rogers, 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 January 30, 2007, alleging compensable head/facial injuries. A prehearing questionnaire was mailed to the claimant and respondents on March 16, 2007. The claimant failed to respond to

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the prehearing questionnaire and this claim was returned to the Commission's general files on April 16, 2007.

Respondent then filed a request to dismiss for lack of prosecution on July 25, 2007. The claimant never responded to the motion to dismiss in writing. On August 1, 2007, this administrative law judge sent the claimant a copy of respondents' motion to dismiss with a cover letter by both certified and regular mail advising claimant to file a response within fifteen days. (Com. Ex. 1 & Com. Ex. 2). Still, with no response from the claimant, a hearing was set for October 30, 2007, at 12:15 p.m. and a notice of said hearing was sent to the claimant by both certified and regular mail. (Com. Ex. 3). Proof of claimant's receipt of the certified notice of hearing was introduced into the hearing record on October 30, 2007, as Commission Exhibit 4 and shows claimant received the certified notice on August 3, 2007, signed for by Mr. Bruce Sanders at the same address that Ms. Sanders had listed with the Arkansas Workers' Compensation Commission. 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 her case but she has failed to respond to written notices and failed to appear at the scheduled hearing.

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

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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.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb