

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F413064

HENRY SMITH	CLAIMANT
WAL MART STORES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 18, 2007

Before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the respondent's Motion to dismiss any pending claims for accidental benefits on April 16, 2007, in Springdale, Arkansas.

The respondent's were present by counsel. The claimant's attorney was also present, but the claimant did not appear. The claimant had been provided notice of the hearing by certified mail return receipt requested, as request by law (a copy of the notice was made Commission Exhibit No. 2). The U S Post Office has not returned either the notice or the delivery receipt. The claimant's attorney also advised the Commission that he has had no contact by the claimant since December of 2006.

A copy of the respondent's Motion was made Commission's Exhibit No. 1. A copy of the Motion to withdraw, filed by the claimant's attorney was made Commission's Exhibit No. 3. The

remainder of the Commission's file was also made a Commission Exhibit and was incorporated by reference.

DISCUSSION

_____A review of the respondent's Motion with attachments and the various documents in the Commission's file reveals that a previous order dismissing any pending claims for additional benefits for lack of diligent prosecution had been entered on July 26, 2005. Following the entry of this order, the claimant had refiled for additional benefits, in the form of additional medical services, on February 3, 2006. At that time, the claimant was seeking an initial evaluation by Dr. James Moore, as the result of a change of physicians that had been previously granted him by the Commission's Medical Cost Containment Division on May 4, 2005.

Following this subsequent claim for additional benefits, arrangements were made for the claimant to be seen and evaluated by Dr. Moore, but the claimant has not made himself available for this evaluation. No explanation for this failure can be gleaned from the record.

From the current record it appears that the claimant has made no good faith attempt to follow through or otherwise pursue his pending claim for additional benefits. His failure in this regard has unnecessarily delayed or, in fact, has presented the expeditious processing of this claim.

After consideration of the evidence it is my opinion that the claimant has clearly failed to reasonably and diligently prosecute his claim for additional benefits. His failure in his regard

unnecessarily delayed or, in fact, has presented the expeditious processing of this claim.

After consideration of the evidence it is my opinion that the claimant has clearly failed to reasonably and diligently prosecute his claim for additional benefits. His failure in this regard should not be allowed to unnecessarily toll the statute of limitations in this claim. I find the respondent's Motion well taken and a dismissal of any and all pending claims for additional benefits to be appropriate.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. This claim was accepted as compensable and appropriate benefits were paid.

3. The claimant was granted a change of physicians on May 4, 2005 to Dr. James Park. Pursuant to appropriate case law this would entitle the claimant to an initial evaluation by Dr. Park. Such an evaluation has been made available to the claimant and he has refused or otherwise failed to amend such an evaluation.

4. The claimant has failed to maintain contact with his attorney. He has failed to request a hearing and otherwise diligently and reasonably prosecute or pursue any claims he may have for additional benefits. The claimant's conduct in this regard is sufficient to merit a dismissal of any pending claims for additional benefits.

ORDER

Any pending claims for additional benefits currently filed in this case should be and hereby are dismissed and no longer act to toll the statute of limitations.

This dismissal is without prejudice to refiling within the time allowed by Ark. Code Ann. §11-9-702(b).

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE