

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F513771**

**THOMAS STACKS, EMPLOYEE**

**CLAIMANT**

**TELEX COMMUNICATIONS, INC.,  
EMPLOYER**

**RESPONDENT**

**AMERICAN ZURICH INSURANCE COMPANY,  
CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 24, 2007**

Hearing before Administrative Law Judge O. Milton Fine II on January 17, 2007 in Conway, Faulkner County, Arkansas

Claimant, pro se, did not appear.

Respondents represented by Mr. Michael G. Stiles, Attorney at Law, Little Rock, Arkansas.

**BACKGROUND**

This matter comes before the Commission on Claimant's and Respondents' motions to dismiss. A hearing on the motions was conducted on January 17, 2007, in Conway, Faulkner County, Arkansas. The Claimant did not appear. Respondents were represented by Mr. Michael G. Stiles, Attorney at Law, of Little Rock, Arkansas.

As recited by the undersigned at the hearing, the Respondents filed a Motion to Dismiss and Brief in Support on October 31, 2006. These pleadings were marked and received as Commission's Exhibit 1. On November 6, 2006, a certified letter was sent to the Claimant by the Commission, giving him fifteen (15) days to respond to the motion. That document was marked and received as Commission's

Exhibit 2. On November 20, 2006, the undersigned sent a letter to the Claimant regarding a conversation he had with the assistant to the undersigned, Vicki Foster, in which he stated that he did not wish to pursue his claim. The letter was marked and received as Commission's Exhibit 3. Claimant was advised to send written notification of his wish within ten (10) days. Later the same day, the Commission received a note from the Claimant written on the bottom of the November 6 letter and bearing what purported to be his signature, requesting that his claim be dismissed without prejudice. This was marked and received as Commission's Exhibit 4. On November 30, 2006, a letter marked and received as Commission's Exhibit 5 was sent to the parties advising of the January 17 hearing. The parties were asked to address the authority of the Commission to grant a voluntary dismissal of a claim in light of *Hooker v. E.C. Rowlett Const. Co. et al.*, AWCC No. F012906 (Feb. 8, 2005).

Respondents at the hearing submitted the following: Claimant filed his form AR-C on October 31, 2005. Respondents initially paid benefits to him. Later, Respondents denied that Claimant was entitled to additional benefits. On February 10, 2006, Respondents forwarded interrogatories and medical authorizations to Claimant. However, he has failed to respond to the interrogatories. Administrative Law Judge Mark Churchwell convened a telephone conference on April 24, 2006, during which Claimant amended his claim from one for additional benefits to one for temporary total disability benefits. Judge Churchwell on April 27, 2006 sent a letter informing the parties that he would not set this matter for a hearing until after Claimant obtained all of his medical reports from the doctors who had treated him

since October 31, 2005. Claimant failed to comply with Judge Churchwell's instruction to file his Prehearing Questionnaire response by May 15, 2006, and still did not do so despite a letter sent June 7, 2006 that warned that failure to file the response within fourteen (14) days would result in the file being returned to the Commission's general files. The file was so returned on June 23, 2006. The April 24 telephone conference mentioned above was the last time Claimant has taken any action in connection with this claim.

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

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. No bona fide request for hearing has been made by the Claimant within the last six months.
3. The Claimant has failed to prosecute his claim for more than six months.
4. This claim should be, and hereby is, dismissed without prejudice pursuant to Ark. Code Ann. § 11-9-702 (Repl. 2002) and AWCC R. 099.13.
5. The Commission lacks the authority to grant a voluntary dismissal, or non-suit, of a claim.

## DISCUSSION

Arkansas Code Annotated § 11-9-702(a)(4) and (d) provide, respectively, as follows:

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.

If within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) of this section.

In addition, AWCC R. 099.13 provides in relevant part:

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.

*See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996)(discussing § 11-9-702(a)(4) and Rule 13).

The evidence adduced clearly shows that Claimant has failed to make a bona fide hearing request within the requisite period and has failed to prosecute his claim. For that reason, Respondents' motion is well-founded and is hereby granted.

Claimant in his motion makes no citation to authority. It appears that he is merely seeking a voluntary dismissal, or non-suit, of this claim. However, the Commission in *Hooker, supra*, was "reluctant" to apply Ark. R. Civ. 41 to allow such a result, in light of the fact that § 11-9-702 and Rule 13 constrain the Commission

to find “lack of prosecution” before granting a dismissal. See *Hooker*, AWCC No. F012906 at \*2. Consequently, Claimant’s motion is denied.

**IT IS SO ORDERED.**

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O. MILTON FINE II  
Administrative Law Judge