

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F512412

**JAMES L. STINE,
EMPLOYEE**

CLAIMANT

**ST. JOSEPH'S MERCY
HEALTH CENTER,
SELF-INSURED EMPLOYER**

RESPONDENT

**SISTERS OF MERCY
HEALTH SYSTEM,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED FEBRUARY 8, 2007,

Pursuant to a hearing conducted January 25, 2007, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas, appearing for the respondents and

Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas, representing the claimant, appearance excused.

STATEMENT OF THE CASE

This was a hearing to consider a Motion to Dismiss filed on behalf of the respondents.

A review of the record shows that on or about October 26, 2005, the claimant gave notice that he was alleging an injury to his left elbow as the result of carrying or lifting a heavy quadriplegic patient September 15, 2005, during his employment as a paramedic or ambulance attendant. On October 31, 2005, the respondents wrote the claimant advising him that he should submit his bills to his group carrier for payment and that his claim was denied on the following bases:

1. He was no longer an employee;
2. He had a subsequent injury to his elbow;
3. He did not file his claim in a timely manner;
4. It appeared to respondents that the claimant did not have an injury to his elbow but his elbow simply began to hurt.

The claimant turned in his claim to his group health carrier and also received short-term disability benefits. The claimant's condition was diagnosed as lateral epicondylitis and an MRI scan on December 21, 2005, indicated a partial biceps tendon tear.

After conferring with the Legal Advisor Division, a hearing was requested and the claimant retained Mr. C. Burt Newell as his attorney. A telephone prehearing conference was conducted May 16, 2006, with counsel and an Order was entered indicating that the parties had amicably resolved most of the issues in dispute so that a hearing was not necessary. The file was returned to general files.

On January 11, 2007, respondents filed a Motion to Dismiss and a hearing was scheduled for January 25. Claimant's counsel filed a Response to the Motion requesting that a prehearing conference be scheduled. However, prior to the hearing, claimant's counsel telephoned the administrative law judge and advised that, after further consultation with his client, he and his client were satisfied that they did not want to proceed and he intended to withdraw the response that he had previously filed on behalf of the claimant. This request to be excused from attending the hearing was granted.

Accordingly, at this time, based upon the pleadings, the statements of counsel, and a review of the file, it is hereby determined that the claimant does not wish to proceed and that the Motion should be, and it is hereby, granted and the claim is hereby dismissed without prejudice.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge