

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F501758**

**ROBERT J. SULLIVAN**

**CLAIMANT**

**WAL-MART STORES, INC.  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED SEPTEMBER 20, 2007**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was held on September 14, 2007, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed July 27, 2007, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant and the Return Receipt has not been received nor has the regular mail been returned.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

**STATEMENT OF THE CASE**

The claimant filed a request for a hearing on August 5, 2005, asking for

additional benefits, specifically asking that medical for a February 5, 2005, emergency room visit be paid. Respondents have now paid for those benefits. No further hearing requests have been made since September 12, 2006.

The respondents filed a motion to dismiss on July 27, 2007. The claimant has not responded to the Commission. The hearing notice was mailed on August 31, 2007, in accordance with *Dillard v. Benton County Sheriff's Office*, 87 Ark App. 379, 192 S.W.3d 287 (2004).

### **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue his case but has not done so.

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 099.13:

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 not been diligent in pursuing his claim.
3. The claimant failed to appear at the dismissal hearing pursuant to Rule 099.13.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 099.13 and pursuant to Ark. Code Ann. §11-9-702(d).

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**