

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501405

SHERRY A. TORRES, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED APRIL 11, 2007

Hearing before HON. DALE DOUTHIT, Administrative Law Judge, on January 16, 2007 at Hope, Hempstead County, Arkansas.

Claimant failed to appear at the hearing.

Respondents were represented by HON. BUDDY CHADICK, Attorney at Law, Fayetteville, 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 full hearing and review of the Commission's file, I find the Motion should be granted.

**STATEMENT OF THE CASE**

The claimant filed an AR-C on February 8, 2005 alleging a wrist injury on February 4, 2005.

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A review of the Commission's file shows the respondents have always controverted this claim in its entirety. After failing to file a prehearing response in 2005, respondents filed a Motion to Dismiss on August 19, 2005. This ALJ scheduled a hearing on respondents' Motion to Dismiss for November 22, 2005. The claimant appeared at the November 22, 2005 hearing and requested more time to seek an attorney. Based on that request, this ALJ entered an order on February 15, 2006 which denied respondents August 19, 2005 Motion to Dismiss and gave the claimant more time to pursue her claim.

Thereafter, more than six months past without the claimant taking any action whatsoever in her claim.

On October 30, 2006 respondents again filed a Motion to Dismiss for want of prosecution, and attached a certificate of service to the claimant's last known address.

On November 14, 2006 this ALJ sent the claimant a copy of respondents October 30, 2006 Motion to Dismiss with a cover letter advising claimant to respond within ten (10) business days. (CX-1).

The claimant never responded to the October 30, 2006 Motion to Dismiss and this ALJ set the matter for hearing on January 16, 2007. Claimant was sent a notice of the hearing date, time and place by both certified and regular mail. (CX-2)

The claimant failed to appear at the 1/16/07 hearing and failed to file any written response to date.

### **FINDINGS AND CONCLUSIONS**

A review of the evidence shows the claimant has had ample opportunity to pursue this

case but has failed to respond to written notices and failed to appear at the scheduled hearing.

There are two provisions for dismissal of claims:

1) 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 failed to appear at the 1/16/07 hearing, failed to respond to any pleadings filed on this matter and has failed to adequately

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prosecute her claim.

I find claimant has had adequate time to investigate this claim and respond to the Notices.

At the request of the respondents, and after hearing, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

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S. DALE DOUTHIT  
Administrative Law Judge