

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F610935

SHEILA J. WALLS, EMPLOYEE

CLAIMANT

IC CORPORATION, SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED OCTOBER 30, 2007

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

Claimant, *pro se*, did not appear.

Respondents represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

I. BACKGROUND

This matter comes before the Commission on Respondents' motion to dismiss. A hearing on the motion was conducted on October 17, 2007, in Conway, Arkansas. The Claimant, who is *pro se*, did not appear. Respondents were represented at the hearing by Mr. John D. Davis, Attorney at Law, of Little Rock, Arkansas. No testimony was taken in the case. The record consists of Commission's Exhibit 1, comprised of seven pages of documents that detail the procedural history of the case after the motion to dismiss was filed, along with Respondents' Exhibits 1 and 2, which are each one page in length.

The instant claim concerns an alleged injury that occurred on or about March 10, 2006. Claimant filed the claim on October 13, 2006, and requested a hearing. Her Form C has been blue-backed to the record in this case. On November 10, 2006, a prehearing questionnaire notice was sent to Claimant. Her response thereto was not forthcoming, so on December 4, 2006 I wrote Claimant that if she

did not file her response within ten days, I would conclude that she had withdrawn her hearing request and return her file to the Commission's general files. See Respondent's Exhibit 1. As reflected in Respondent's Exhibit 2, because the completed questionnaire was not filed by the above deadline, I returned the file to the Commission's general files on December 14, 2006. On August 10, 2007, Claimant filed a motion to dismiss the claim under AWCC R. 099.13. See Commission Exhibit 1. I sent Claimant a letter by certified mail on August 16, 2007, advising her that she had 15 days to respond to the motion. See *id.* Claimant signed for the letter. See *id.* However, she filed no response. Claimant was given notice of the hearing by certified mail. A "Rhiannon Kurtz" signed for the letter.

Claimant failed to appear at the October 17 hearing. Respondents' attorney appeared and presented argument along the lines of the motion to dismiss.

II. 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. Claimant has failed to prosecute her claim.
3. Claimant was provided reasonable notice of the motion to dismiss and of the hearing thereon.

4. Dismissal of this claim *without prejudice* is warranted under AWCC R. 099.13.

III. DISCUSSION

AWCC R. 099.13 provides:

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, *inter alia*, Rule 13).

After Claimant made her initial request for a hearing, she has taken no further action. Because she did not return a completed prehearing questionnaire, the file was returned to the Commission's general files on December 14, 2006. Since that time, she has done nothing to move this claim forward. The evidence at bar clearly shows that Claimant has failed to prosecute her claim. Also, as documented by the certified mail receipts in evidence, reasonable notice of the motion to dismiss and of the October 17, 2007 hearing thereon was provided to her. Hence, dismissal of the instant claim is justified under Rule 13.

That leaves the question of whether the dismissal should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). This includes claims dismissed under Rule 13. *Johnson*, 55 Ark. App. 83, 929 S.W.2d 730. In *Abo v. Kawneer Co.*, 2005 AWCC 226, Claim No. F404774

(Full Commission Opinion filed November 15, 2005), the Commission wrote: “In numerous past decisions, this Commission and the Appellate Courts have expressed a preference for dismissals *without prejudice*.” (emphasis added)(citing *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Based upon the facts here, and in light of the law, the dismissal of this claim should be *without prejudice*.

IT IS SO ORDERED.

O. MILTON FINE II
Administrative Law Judge