

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702599

BRENDA G. WHITE, EMPLOYEE	CLAIMANT
ConAGRA FOODS, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED DECEMBER 20, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on December 14, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Betty J. Hardy, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 14, 2007, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

This claim concerns an alleged accident and injury occurring on or about May 1, 2005. Respondents have controverted the claim in its entirety, maintaining that the claimant did not sustain an injury arising out of and during the course of her employment as alleged on May 1, 2005.

A procedural history of the claim is warranted. On March 14, 2007, the claimant filed a Commission form AR-C which was dated March 12, 2007, claiming an injury to her collar bone and right hand, alleging a date of injury of May 1, 2005. The claimant had previously reported a right hand injury on January 28, 2005,

AWCC #F702598, which was apparently treated as a medical only claim. Again, the claimant did not file the within claim until March 14, 2007. At the hearing, she conceded that any claim for the January 28, 2005, incident was barred by statute of limitations. By letter dated April 6, 2007, claimant requested a hearing on the May 1, 2005, alleged injury. Because respondents controverted the claim in its entirety, and because the dispute did not exceed \$2,500.00, the claim was assigned to the Legal Advisor Division for a mediation conference. After mediation failed, the claim was then assigned to the Adjudication Division on June 15, 2007. A Prehearing Questionnaire was sent on June 15, 2007, together with an advisory letter concerning the claimant's rights to legal representation. Because the claimant failed and/or refused to respond to the Prehearing Questionnaire, the claim was returned to the Commission's general files on July 11, 2007.

No further action was taken by either party until respondents filed a Motion to Dismiss on October 22, 2007, a copy of which was sent to the claimant. By letter dated October 24, 2007, the claimant was advised that a Motion to Dismiss had been filed. The letter granted the claimant twenty (20) days to either respond to the Motion or request a hearing. The notification further indicated that failure to respond could result in the dismissal of the claim. The correspondence was sent both Certified Mail, Return Receipt Requested, as well as First-Class Mail. The First-Class notice was not returned. The Certified Mail was returned, unclaimed. A hearing was scheduled at respondents' request pursuant to the decision in *Dillard*

v. Benton County Sheriff's Office, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

The hearing notice was sent November 16, 2007, scheduling the claim for a hearing on December 14, 2007. The hearing notice was again sent Certified Mail, as well as First-Class Mail. The claimant received both notices.

The claimant appeared at the December 14, 2007, hearing. She objected to the dismissal of her claim. However, during a frank exchange of information between the claimant and respondents' attorney, the claimant candidly conceded that, if a hearing was scheduled, she would not be able to sustain her burden of proof. The claimant acknowledged that she did not seek any medical treatment following the occurrence of the alleged incident on May 1, 2005. It was pointed out by respondents' attorney that the claimant continued working for the employer herein after May 1, 2005, until on or about April 10, 2006, at which time she voluntarily resigned. The claimant stated that, in fact, she had not seen any medical provider between May 1, 2005, and December 14, 2007. The claimant indicated that the reason she requested a hearing was because she was appalled and irritated by the employer's course of conduct and lack of concern following the incident. When advised that she would be required to prove her claim with medical evidence supported by objective findings, the claimant conceded that she could not prevail on the merits of her claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this

claim.

2. The claimant has filed a claim for benefits alleging a May 1, 2005, injury.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute her claim.
5. The claimant cannot sustain her burden of proving that she sustained a work-related injury arising out of and during the course of her employment with ConAgra Foods on May 1, 2005.

DISCUSSION

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
2. proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
4. proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Based upon the foregoing, it is apparent that the claimant lacks the necessary evidence to prove that she sustained a compensable injury. The claimant has failed and/or refused to make a good faith effort at securing the necessary evidence to go forward and has failed to prosecute her claim. Accordingly, respondents' Motion to Dismiss is granted. The claim is hereby denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge