

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F701168 & F701169

SHIRLEY WHITEHEAD, EMPLOYEE

CLAIMANT

N.L.R. SCHOOL DISTRICT, SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, TPA

RESPONDENT

OPINION FILED NOVEMBER 21, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 21, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant pro se.

Respondent represented by the HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claims on the motion filed herein by respondent to dismiss the claims for want of prosecution. On November 6, 2007, a pre-hearing conference was conducted on the motions, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

In addition to the Pre-hearing Order, comprising the record in this claim is the October 15, 2007, Motion to Dismiss of the Respondent; Respondent's Response to Prehearing Questionnaire; the claimant's February 23, 2007, hearing request; and the May 1, 2007, correspondence of the Commission to the claimant returning the files to the general files of the Commission.

DISCUSSION

Shirley Whitehead, the claimant, with a date of birth of July 29, 1961, commenced her employment with respondent in January 1995, as a bus aide. Claimant asserts that she suffered a injury within the course and scope of employment to her left elbow on November 17, 2006, and to her ankle on January 12, 2007. Respondent denied the compensability of both claims and refused to pay any workers' compensation benefits.

On February 23, 2007, claimant filed a written request for a hearing on the above-mentioned claims. On March 30, 2007, the files were assigned to the Adjudication Division of the Arkansas Workers' Compensation Commission for disposition of the claimant's hearing request. On April 2, 2007, pre-hearing questionnaires were forwarded to the parties and a May 1, 2007, pre-hearing teleconference scheduled.

While respondent submitted a responsive filing to the pre-hearing questionnaire, the claimant failed to do so. In its responsive filing respondent denied the compensability of both claims. In accordance with the April 2, 2007, notice from the Commission, the claimant as the party requesting the hearing having failed to submit a responsive filing to the Questionnaire, in a May 1, 2007, correspondence the claimant was notified that the files were being returned to the Commission's general files section pending a further hearing request.

On October 12, 2007, respondent filed a Motion to Dismiss the claimant's claims pursuant to Ark. Code Ann. §11-9-702 (d) and Arkansas Workers' Compensation Commission Rule 13. In an October 18, 2007, correspondence mailed to the claimant by certified mail - returned receipt requested, claimant was notified of the respondent's Motion to Dismiss, and directed to submit a written response to same no later than October 31, 2007. Claimant failed to

submit a response, written or otherwise, in accordance with the October 18, 2007, Commission correspondence. Further, the claimant failed to participate in the scheduled November 6, 2007, pre-hearing teleconference on the Motion to Dismiss.

After a thorough consideration of all of the evidence in this record, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission had jurisdiction of these claims.
2. On November 17, 2006, and January 12, 2007, the employee-employer relationship existed between the parties.
3. On February 1, 2007, claimant filed Form AR-Cs with the Arkansas Workers' Compensation Commission for workers' compensation benefits relative to a November 17, 2006, elbow injury, and a January 12, 2007, ankle injury.
4. On February 23, 2007, the claimant submitted a written request for a hearing before the Arkansas Workers' Compensation Commission on both of her claims. The claimant has taken no affirmative steps or actions to pursue her claims since submitting the February 23, 2007, hearing request.

CONCLUSIONS

The claimant filed Form AR-Cs seeking workers' compensation benefits relative to a November 17, 2006, elbow injury and a January 12, 2007, ankle injury. On February 23, 2007, claimant requested a hearing before the Arkansas Workers' Compensation Commission relative to the afore claims. Pre-hearing Questionnaires were forwarded to the parties and a pre-hearing

teleconference scheduled. The claimant failed to submit a responsive filing to the Questionnaire. As a consequence of the afore, the files were returned to the general files of the Commission. On October 12, 2007, respondent filed a Motion to Dismiss the claims pursuant to Ark. Code Ann. §11-9-702 (d) and Arkansas Workers' Compensation Commission Rule 13.

The record is devoid of any affirmative actions taken by the claimant to pursue or prosecute her claims for workers' compensation benefits subsequent to the February 23, 2007, written hearing request. The claimant failed to submit responsive filings to the Questionnaire that was forwarded to her at the time the claims were assigned the Adjudication Division of the Arkansas Workers' Compensation Commission.

Once the files were returned to the general files of the Commission respondent filed a Motion to Dismiss. In addition to the respondent providing a copy of the Motion to Dismiss to the claimant, notice of the Motion to Dismiss was also provided to the claimant by the Commission via certified mail - return receipt requested. Claimant failed to respond to either of the afore. A Pre-hearing Order and Hearing Notice of November 6, 2007, was mail to the claimant setting forth the date, time and location of a scheduled November 21, 2007, hearing on the Motion to Dismiss. The claimant failed to attend the scheduled November 21, 2007, hearing.

It is undisputed that the claimant did indeed request a hearing on her claims on or about February 23, 2007. Ark. Code Ann. §11-9-702 (d), provides in pertinent part:

If, within six (6) months after the filing of a claim for additional compensation, no bonafide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection (b) Of this section.

Respondent controverted the compensability of both of the claimant's claims, and as such have not paid any workers' compensation benefits in connection with the claims. Neither the above cited statutory provision nor that lodged in Ark. Code Ann. §11-9-702 (a)(4) is applicable in the instant claims in that the claimant did indeed request a hearing within six (6) months of her filings of the Form AR-Cs.

Arkansas Workers' Compensation Commission Rule 099.13 provides, in pertinent part:

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.

In the instant claims notice was provided to all parties of the respondent's Motion to Dismiss, and the claimant has failed to respond. The claimant has fail to respond to the Questionnaire which was forwarded to her in accordance with her February 23, 2007, hearing request. Further, the claimant has failed to respond to the Motion to Dismiss filed herein by respondent, to raise an objection to the Motion to Dismiss, and the claimant failed to appear at the hearing on the Motion to Dismiss. According, I find that the claimant has failed to pursue or prosecute her claims for workers compensation benefits, and the motion of the respondent should be granted. These claims are herein dismissed for want of prosecution.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE