

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609520

ERIC WOODARD	CLAIMANT
GERBER PRODUCTS	RESPONDENT
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 20, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant pro se and not appearing at hearing.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss, which was filed with this Commission, on October 16, 2007. This Motion alleged that the claimant has failed to diligently prosecute his claim and that more than six months has expired since the previously scheduled hearing.

The Respondents' Motion was made Commission's Exhibit No. 1 to the hearing. Notice was sent to the claimant of the Respondents' Motion and the scheduled hearing thereon, by certified mail return receipt requested. This notice was returned by the postal authorities as unclaimed and has been admitted as Commission's Exhibit No. 2.

The entire Commission's file was admitted as Commission's Exhibit No. 3, and incorporated by reference in the transcript of the current proceeding.

DISCUSSION

A review of the Commission's file reflects that an original claim for benefits was filed on behalf of the claimant by Mr. Robert Blatt, who was the claimant's attorney at that time. This claim was filed with the Commission on January 2, 2007. It alleged an injury to the claimant's lower back in a "slip and fall" which allegedly occurred on June 6, 2006.

A hearing was subsequently requested by Mr. Blatt, by letter dated February 20, 2007, and was accompanied by a pre-hearing questionnaire. A pre-hearing was conducted in the claim and a pre-hearing order entered on March 20, 2007. This pre-hearing order set the matter for full hearing on May 22, 2007, at 3:30 p.m. in the Commission's office in Fort Smith, Arkansas.

Prior to the scheduled hearing, the claimant's attorney amended the claimant's allegations to reflect an injury date of June 22, 2006. This was done by letter dated April 11, 2007.

Due to the inability of certain witnesses to attend the hearing, the hearing was rescheduled (at the respondents' request) for July 10, 2007. Notice of this change was sent to the attorneys for the various parties, on May 23, 2007.

On June 19, 2007, the claimant's attorney filed with the Commission, a Motion to withdraw as the claimant's attorney of record. In the Motion, the claimant's attorney alleged irreconcilable differences with his client and the receipt of misinformation from his client. No response was made by the claimant

to this Motion. By Order dated June 20, 2007, the claimant's attorney of record was allowed to withdraw.

By letter dated June 20, 2007, the claimant was also directed to advise me within ten days after the receipt to this letter, if he wished to proceed with the hearing that was scheduled for July 10, 2007. No response was received by the claimant in regard to this correspondence.

Therefore, the scheduled hearing was cancelled. The claimant was advised of this fact and was also informed that the matter would not be reset for hearing until requested. No type of response or communication has been received from the claimant, since that time.

After consideration of the foregoing evidence, it is my opinion that the Respondents' Motion is well taken. The claimant has failed to prosecute his claim in a diligent manner. The claimant has also failed to make a bona fide attempt to pursue this claim to hearing within the time period allotted by Ark. Code Ann. §11-9-702(a)(4).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. An initial claim for benefits was filed by the claimant, with this Commission, on January 2, 2007. No benefits have been paid by the respondents in this case.

3. The claimant has failed to diligently prosecute this claim. He has also failed to make a bona fide attempt to pursue this claim to hearing within the last six months.

4. The Respondents' Motion to Dismiss this claim, under Ark. Code Ann. §11-9-702(a)(4) and for the claimant's failure to diligently prosecute, is well taken and shall be granted.

ORDER

Based upon the foregoing findings and conclusions, this claim should be and hereby is dismissed without prejudice. This claim may be refiled within the time period allotted by Ark. Code Ann. §11-9-702.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE