

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302165

DONNA WORTHY

CLAIMANT

SHARPER IMAGE

RESPONDENT EMPLOYER

ATLANTIC MUTUAL INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 9, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE SIMMONS S. SMITH, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held to determine whether the above claim should be dismissed for lack of prosecution. The claimant was notified of the hearing by certified mail but waived her appearance. In fact, the claimant through her attorney, Simmons Smith, advised that she did not wish to pursue her claim and requested the claim be dismissed.

The hearing was scheduled on Respondents' Motion to Dismiss for Lack of Prosecution filed on October 25, 2006, pursuant to Rule 099.13 of the Arkansas Workers' Compensation Commission and Ark. Code Ann. §11-9-702(a)(4). The claimant failed to appear at the hearing.

After review of the documentary exhibits filed by the respondents and claimant, I find the claimant has not been diligent in pursuing her claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claimant sustained an admittedly compensable condition of bilateral carpal tunnel syndrome that manifested in October of 2001. The claimant underwent surgery for his right hand in January 2003 and the doctors recommended surgery for the left hand. The claimant elected not to go forward with surgery on the left hand and did not seek further benefits. The claimant filed a claim for additional medical benefits in May 2006; however, respondents contended the claim was barred by the statute of limitations. The parties discussed their positions and the claimant decided not to proceed with her claim. The claimant notified the Commission in writing on November 20, 2006, that she did not want to pursue her claim.

Respondents filed a motion to dismiss and the hearing notice was mailed on November 3, 2006, in accordance with *Dillard v. Benton County Sheriff's Office*, ___ Ark. App. ___, ___ S.W.3d ___ (9/22/04/CA 04-025).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue her case but has now elected not to proceed with her claim. In fact, the claimant has expressly stated she does not wish to proceed with her claim.

There are two provisions for dismissal of claims:

Ark. Code Ann. §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 099.13.

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 has stated she does not wish to pursue her claim.
3. The claimant failed to appear at the dismissal hearing pursuant to Rule 099.13.

At the request of the respondents, this case is dismissed with prejudice for failure to prosecute pursuant to Rule 099.13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**