

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606719 & F613540

NICOLE WRIGHT, EMPLOYEE	CLAIMANT
SANYO MANUFACTURING CORPORATION, EMPLOYER	RESPONDENT
MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA, INSURANCE CARRIER/TPA	RESPONDENT #1
LIBERTY MUTUAL FIRE INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT #2

OPINION AND ORDER FILED NOVEMBER 7, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on November 2, 2007, at Forrest City, St. Francis County, Arkansas.

Claimant failed to appear.

Respondent #1 represented by Mr. Andrew M. Ivey, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 represented by Mr. Mark Mayfield, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 2, 2007, to determine whether these claims should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

The above-styled claims concern bilateral carpal tunnel syndrome claims as the result of alleged repetitive motion injuries sustained at Sanyo Manufacturing Corporation. As will be set out further below, both respondent carriers have

controverted any liability for the claims.

A procedural history is warranted. By letter/fax dated June 20, 2006, the claimant, acting *pro se*, requested a change of physicians from Dr. Sudesh Banaji to Dr. Kenneth Chan at the NEA Clinic in Jonesboro, Arkansas. On June 23, 2006, claim number AWCC #F606719 was assigned to the Medical Cost Containment Division for a change of physician. Thereafter, and prior to the entry of any change of physician, the claimant, again acting *pro se*, sent a letter dated August 21, 2006, and requested a hearing on her claim. In the letter, the claimant identified incident dates in both 2005 and 2006 with the respondent employer. On September 25, 2006, a Change of Physician Order was filed by the Medical Cost Containment Division approving the requested change at which time claim number AWCC #F606719 was assigned to the Adjudication Division pursuant to the claimant's hearing request.

A prehearing questionnaire was sent to the claimant and respondent carrier #2 on September 28, 2006. Prehearing information filings were submitted by both parties. The parties were granted additional time to complete discovery. Respondent carrier #2 advised that the employer was previously insured by carrier #1; that the claimant had filed an AR-N on or about February 1, 2005, a copy of which was attached, and respondent carrier #2 requested that respondent carrier #1 be joined as a party respondent. A prehearing conference was scheduled for January 3, 2007. However, as the result of an administrative and clerical error,

respondent carrier #1 was never placed on notice and asked to state its position relative to the claimant's February 1, 2005, alleged injury. Accordingly, the prehearing conference scheduled for January 3, 2007, was cancelled and a second prehearing questionnaire was sent to the parties on December 20, 2006, listing both respondent carriers. Respondent #1 filed prehearing information responses on January 18, 2007, acknowledging that it was on the risk for the period beginning January, 2005, until December 31, 2005, at which time respondent #2 became the carrier. A second prehearing conference notice was sent January 19, 2007, scheduling the multiple claims for a prehearing conference on March 14, 2007. A prehearing conference was conducted on March 14, 2007, at which time the claimant requested additional time in which to consult with an attorney prior to pursuing her claims. Accordingly, a Prehearing Order was filed on March 14, 2007, returning the claims to the Commission's general files.

No further action was taken by the claimant following the March 14, 2007, prehearing conference. On September 14, 2007, respondent carrier #1 filed a Motion to Dismiss the claims for want of prosecution, together with a Brief in Support of its Motion, a copy of which was served on both the claimant and respondent #2. By letter dated September 20, 2007, this Commission further advised the claimant that the Motion had been filed at which time it granted the claimant twenty (20) days to respond to the Motion and/or request a hearing. The claimant was further advised that failure to respond could result in the dismissal of

her claims. The notification was sent both Certified-Mail, Return Receipt Requested and First-Class mail. The notice was received by the claimant on September 25, 2007, as reflected by the return receipt of the notice which was introduced at the hearing as "Commission's Exhibit 1."

The claimant failed to respond to the Motion and/or request a hearing. On October 15, 2007, a hearing was scheduled for November 2, 2007, on both claims. Again, notice of the hearing was sent to the claimant both Certified-Mail, Return Receipt Requested and First-Class mail. The First-Class mail was not returned. The Certified-Mail was returned unclaimed. At the hearing, respondent #1 again asked that the claims be dismissed for want of prosecution. At the hearing, respondent #1 introduced documentary evidence in support of its Motion. Respondent #2 joined in the Motion and requested that any claim against it also be dismissed.

It must be pointed out that both carriers have denied liability for any benefits. Alternatively, if benefits are owed, which both specifically deny, they assert that the other carrier is liable for said benefits.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The claimant has filed a claim for benefits alleging multiple dates of injury.

3. Both respondents herein have controverted these claims in their entirety.
4. The claimant has failed to prosecute her claims.
5. These claims should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13.

#### DISCUSSION

\_\_\_\_\_ Rather than conduct a further analysis of the record in this cause, suffice it to say that the record as a whole reflects that the claimant has failed and/or refused to prosecute her claims. The claimant has been advised that her failure to respond to prior notices, as well as to appear at the scheduled hearing would result in the dismissal of her claims. 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).

After full consideration of the facts, issues, and the law, and with notice of the hearing being sent to the claimant, without objection thereto, it is hereby determined that these claims should be, and they are, hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of the claims if filed within the statutory time imposed by Arkansas law.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge