

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F709302

CURTIS ABERCROMBIE, Employee	CLAIMANT
TRANSPORT REFRIGERATION OF NWA, INC., Employer	RESPONDENT
ACE PROPERTY & CASUALTY INSURANCE CO., Carrier	RESPONDENT

OPINION/ORDER FILED AUGUST 25, 2008

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant not represented by counsel and not appearing at hearing.

Respondents represented by ERIC NEWKIRK, Attorney, Little Rock, Arkansas.

OPINION/ORDER

This case comes on for review following a hearing on respondent's motion to dismiss. After consideration of the respondent's motion, the claimant's failure to respond thereto, and all other matters properly before the Commission, I find that respondent's motion to dismiss should be granted.

Claimant filed Form AR-C on September 9, 2007 requesting compensation benefits. A pre-hearing conference was conducted on this claim on October 31, 2007, and a hearing set for January 9, 2008. Prior to the scheduled hearing claimant failed to appear for a deposition on December 18, 2007. Claimant's attorney subsequently filed a motion to withdraw as counsel and that motion was granted by an order dated January 4, 2008. By letter of that same date the January 9, 2008 hearing was canceled and claimant was instructed to advise the Commission as to whether he wished to proceed with his claim. No response from the claimant was received and a second letter was sent to claimant on March 3, 2008 again asking him to advise as to whether he wished to proceed with his claim. No response was received from claimant and respondent filed its motion to dismiss on June 20, 2008.

A hearing on the respondent's motion was set for August 6, 2008, and notice of the hearing was sent to claimant by certified mail. Despite receiving notice of the scheduled hearing claimant did not appear at the hearing.

Based upon the claimant's failure to appear at his scheduled deposition, the claimant's failure to respond to two letters requesting him to advise the Commission as to whether he wished to proceed with his claim, the claimant's failure to appear at the hearing, and all other matters properly before the Commission, I find that claimant has failed to prosecute his claim and find that respondent's motion to dismiss should be granted.

Accordingly, for the foregoing reasons, the respondent's motion to dismiss is granted. This claim is dismissed without prejudice.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE