

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F706366

ERIC BATY, EMPLOYEE

CLAIMANT

**ANCHOR TERMITE & PEST CONTROL, INC.,
EMPLOYER**

RESPONDENT

**FIRSTCOMP INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED SEPTEMBER 25, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant filed a Form AR-C with the Commission on June 26, 2007, which indicated a date of injury of May 11, 2006. Respondents filed a Form 1 and a Form AR-2 on July 11, 2007, indicating the claim had been controverted. By letter dated July 12, 2007, from the Commission, the claimant was advised that the respondents were denying his claim.

By letter dated July 27, 2007, attorney J. Mark White entered his appearance as attorney of record on behalf of the claimant. Mr. White also advised that the correct date of injury should be May 12, 2006. By letter dated May 1, 2008, Mr. White requested permission to withdraw from representation of the claimant and by Order dated May 14, 2008, the Commission granted Mr. White's request.

On May 22, 2008, respondents filed a Motion to Dismiss for lack of prosecution and the file was assigned to this Administrative Law Judge.

The claimant was advised of respondents' Motion to Dismiss by letter dated May 28, 2008, sent via certified mail and first-class mail to the claimant's last known address. The claimant was warned therein that failure to respond may result in a

dismissal of his claim. By letter dated June 15, 2008, the claimant's mother, Ms. Samantha Smith, responded to the Motion to Dismiss advising that she had Power of Attorney to handle the claimant's affairs. Ms. Smith requested that the case not be dismissed and requested a hearing on the claim. By letter dated June 18, 2008, from this Administrative Law Judge, the respondents' Motion to Dismiss was denied and Prehearing Questionnaire Notices and Prehearing Questionnaires were sent to the parties. On July 21, 2008, respondents filed a response to the Prehearing Questionnaire. By letter dated July 22, 2008, the claimant was given an additional ten (10) days to file a response to the prehearing questionnaire and was advised that if responses were not received, the claim may be dismissed. No prehearing questionnaire response has been received from the claimant. By letter dated August 11, 2008, respondents requested the claim be dismissed.

A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail scheduling the matter for hearing on September 24, 2008. The Notice provided that "Failure to appear will result in dismissal of this claim." Ms. Smith contacted the Commission on August 18, 2008, and advised that for various reasons she did not wish to pursue the claimant's claim at this time. Neither Ms. Smith nor the claimant appeared at the hearing scheduled on September 24, 2008.

Commission Rule 13 provides in relevant part as follows:

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge