

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700761/F700762

KRISS BROOKS

CLAIMANT

WASTE REMOVAL EXPERTS, INC.
UNINSURED

RESPONDENT

OPINION FILED SEPTEMBER 3, 2008

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

Claimant not represented by counsel.

Respondent not represented by counsel.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 2, 2008. This hearing had been set and a pre-hearing order was entered and filed on July 16, 2008. A pre-hearing order was sent to the claimant's then attorney, Jerry Pruitt, and to the claimant certified mail return receipt requested. The claimant's copy of the pre-hearing order and notice of hearing was returned by the U. S. Post Office as unclaimed after three attempts.

Subsequent to the entry of the pre-hearing order, but prior to the hearing, the claimant's attorney requested leave to withdraw as counsel of record. The reason for this request was the claimant's failure to keep in contact or communicate with his attorney. Mr. Pruitt was allowed to withdraw as claimant's counsel by Order dated August 27, 2008.

On September 2, 2008, the respondent's appeared through their representative, Donna Minetti. The claimant failed to appear in person, by designated representative, or by legal counsel.

DISCUSSION

A claim was filed on behalf of the claimant that alleged a compensable injury or injuries on December 26, 2006. This claim has, since its inception, been controverted in its entirety. Thus, the burden of proof would rest on the claimant to prove all of the elements necessary for him to be entitled to the benefits he now seeks.

Clearly, the claimant's failure to appear at the scheduled hearing would prevent him from establishing any of the facts necessary to entitle him to benefits. The claimant's actions in this case (by failing to remain in contact with his attorney and by failing to appear at the hearing) are a strong indication that he has abandoned his claim.

The claimant's failure to appear at the scheduled hearing would be a sufficient basis, in and of itself, to dismiss this claim in its entirety. Certainly, such action would be even more justified by the claimant's conduct prior to the hearing. It is therefore my opinion that this case should be and hereby is dismissed in its entirety. However, this dismissal is without prejudice to the refiling of the claim within the time period allotted by law.

FINDINGS OF FACT & CONCLUSIONS OF LAW

- _____ 1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has failed to remain in contact with his attorney.
3. The claimant has refused to accept delivery of certified documents sent to his last known address.
4. Finally, the claimant has failed to appear at the scheduled hearing on his claim. All of these constitute sufficient grounds to dismiss this claim in its entirety.
5. The respondent has denied the occurrence of any compensable injuries and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to dismiss this claim in its entirety. However, this dismissal is without prejudice to refiling within the time period allotted by the Act.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE