

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F802670

ROY BURTON	CLAIMANT
BEKAERT CORPORATION	RESPONDENT
TRAVELERS INDEMNITY CO. OF AMERICA CARRIER	RESPONDENT

OPINION FILED AUGUST 20, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On June 26, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 7, 2008, and a pre-hearing order was filed on May 9, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On September 30, 2007, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury on September 30, 2007.

4. The claimant is entitled to a weekly compensation rate of \$370 for temporary total disability and \$278 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of treatment received on claimant's left shin after October 13, 2007.

2. Temporary total disability from October 13, 2007, to a date to be determined.

3. Attorney's fees.

Claimant's contentions are:

"The claimant suffered an admittedly compensable injury arising out of in the course of his employment with the respondent on September 31, 2007, when a 2 ton wire spool swung into his left shin and cracked his tibia. Appropriate medical benefits were paid up in through October 12, 2007. Subsequently, while walking off work hours, the tibia which had a crack in it, snapped in two and the claimant has incurred additional medical treatment, and been unable to return to work from and since that date. This is a continuation of the original injury, and all medical expenses associated therewith are the responsibility of the respondent. He is further entitled to TTD from and since October 13, 2007, continuing as well as statutory attorney's fee."

Respondents' contentions are:

"The respondents will contend that the claimant sustained an independent intervening accident on October 22, 2007 and that his temporary disability and need for medical treatment on and after October 22, 2007 were due to the independent intervening accident and not to the original compensable injury. In the event the Commission determines that the claimant is entitled to additional

benefits on and after October 22, 2007, the respondents request credit for weekly short term disability benefits the claimant received under his group plan at Bekaert Corporation in the amount of \$300.00 per week.”

DISCUSSION

The claimant failed to appear for the scheduled hearing. Claimant's attorney stated that the claimant verbally notified his office that he no longer wished to pursue his claim. As a result of this notification the claimant's deposition was canceled. Claimant's attorney indicated that he has been unable to persuade the claimant to come in so that his rights and options could be explained to him. He further stated that the Commission mailed the claimant a copy of the pre-hearing order and he stated that a notice was mailed to the claimant from his office notifying him of the hearing. The claimant's attorney then verbally requested that he be allowed to withdraw as attorney of record for the claimant.

Respondents' attorney had no objection to claimant's attorney being allowed to withdraw as counsel. However, respondents' attorney verbally request a Motion to Dismiss in the matter pursuant to the claimant's failure to appear.

ADJUDICATION

_____ From a review of the file as well as statements from both counsel, I hereby grant the Motion to withdraw.

The claimant received the notice of hearing as evidenced by the certified card which he signed on May 21, 2008. Claimant's attorney also mailed notice to the claimant notifying him of the hearing date. The claimant has verbally notified his attorney that

he no longer wished to pursue his claim. Pursuant to all the evidence contained in the file and to the statements of counsel, I find that this claim should be dismissed in its entirety.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the statements of counsel, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 7, 2008, and contained in a pre-hearing order filed May 9, 2008, are hereby accepted as fact.

2. The claimant has failed to make himself available for this matter and was given proper notice.

3. The claimant has expressed a desire not to pursue his claim.

ORDER

____Based upon my foregoing findings and conclusion, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE