

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610780

NARCISO CABALLERO

CLAIMANT

ARROW PLUMBING, INC.

RESPONDENT EMPLOYER

COLUMBIA NATIONAL INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED AUGUST 28, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE GAIL O. MATTHEWS, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on August 20, 2008, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed June 18, 2008, pursuant to Rule 13 of the Commission. A certificate of service was sent to the claimant and to the claimant's attorney. Mr. Robert James, claimant's attorney, notified the Commission that he did not oppose the motion to dismiss.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claim was initiated by the filing of a Form 1 with the Commission relating to a September 8, 2006, injury. The claim was accepted and medical benefits were paid as well as a 5% permanent impairment rating to the back. The claimant also had a change of physician from Dr. John Wilson to Dr. Kenneth Rosenzweig. Some additional discovery was initiated; however, the claimant elected not to pursue his claim.

The respondents filed a motion to dismiss on June 18, 2008. The Commission sent a letter on June 25, 2008, asking for the claimant's position on the Dismissal Motion. The hearing notice was mailed on July 29, 2008, in accordance with *Dillard v. Benton County Sheriff's Office*, 87 Ark App. 379, 192 S.W.3d 287 (2004).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case. The claimant has not requested a hearing within the last six months and the claimant's attorney has advised that he does not object to the claim being dismissed.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):

If within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

Rule 13:

The Commission may, in its discretion, postpone or recess

hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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. (Effective March 1, 1982)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the dismissal hearing pursuant to Rule 099.13. The claimant's attorney had no objection to the claim being dismissed.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**