

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500762

MICHAEL J. CAFFEY, EMPLOYEE	CLAIMANT
DASSAULT FALCON JET CORPORATION, EMPLOYER	RESPONDENT
INSURANCE COMPANY STATE OF PENNSYLVANIA, AIG CLAIMS SERVICE, INC., INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION AND ORDER FILED JUNE 24, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on June 23, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Robert R. Cortinez, II, Attorney-at-Law, Little Rock, Arkansas.

Respondent #1 represented by Mr. Jarrod S. Parrish, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 did not appear.

STATEMENT OF THE CASE

A hearing was conducted on June 23, 2008, to determine whether the claimant was entitled to additional workers' compensation benefits. The claimant failed and/or refused to appear at the hearing. A prehearing telephone conference was conducted in this claim on May 14, 2008, and a Prehearing Order was filed on May 15, 2008.

At the prehearing conference, it was stipulated that the employment relationship existed between the parties at all relevant times, including January 5, 2005; that the claimant sustained a compensable hernia on January 5, 2005; that

he earned sufficient wages to entitle him to compensation rates of \$381.00 per week for temporary total disability and \$286.00 per week for permanent partial disability; that respondents paid appropriate medical, as well as temporary total disability related to the initial surgery following the January 5, 2005, admitted hernia; and that respondents had controverted benefits beyond those previously paid, specifically, benefits related to an alleged recurrent hernia on July 22, 2005.

By agreement of the parties, the primary issue was whether the claimant sustained a recurrent hernia on or about July 22, 2005. If answered affirmatively, claimant's entitlement to associated benefits must be addressed. At the prehearing conference, respondents insisted that if the claimant did not pursue his claim, that the claim be dismissed for want of prosecution.

Claimant contended, in summary, that he sustained a recurrent hernia injury on July 22, 2005, which was a compensable consequence of the January 5, 2005, admitted hernia; that respondents should pay for an exploratory surgery necessary to determine the nature and extent of claimant's hernia, while reserving future entitlement.

The respondents #1 contended that the claimant did not sustain a recurrent hernia injury. Respondent #2 waived its appearance at any hearing agreeing to defer to the outcome of litigation.

As noted above, the claimant failed to appear at the scheduled hearing. Claimant's attorney pointed out that he had made numerous efforts at establishing

contact with his client as reflected by documentary evidence which was introduced as part of respondents #1's exhibit packet. (Resp. Ex. A, pp.25-26)

This claim has an extremely lengthy and unusual procedural history. A summary of the procedural history is warranted.

The claimant filed a Commission form AR-C, together with a hearing request which was received on November 5, 2006. The hearing request contained errors concerning the spelling of the claimant's last name, as well as the date of the injury. Accordingly, the claim was not initially assigned for adjudication. By letter dated December 21, 2006, and received on December 22, 2006, respondents #1 filed a Motion to Dismiss which was clearly premature. The claim was assigned to the Adjudication Division on January 3, 2007. A letter was issued on January 3, 2007, advising the parties that the claim had been assigned to consider respondents' Motion to Dismiss for failure to prosecute. Clerical errors were pointed out to the parties, and the parties were asked to confer and advise how they wished to proceed. In response, claimant's attorney requested a hearing on January 5, 2007, specifically, requesting additional medical treatment and impairment benefits. An Order was filed on January 10, 2007, denying respondents' Motion to Dismiss. Contemporaneously, a prehearing questionnaire was sent to the parties on January 10, 2007. Following an extensive prehearing procedure, a prehearing conference was conducted on April 11, 2007, and a Prehearing Order was filed on said date, granting the parties additional time to take the claimant's discovery deposition, as

well as to obtain supplemental medicals from Dr. Rex Luttrell and/or Dr. Emilio Tirado. Another prehearing conference was conducted on May 2, 2007, and a Prehearing Order was filed on said date. At the May 2, 2007, prehearing conference, the parties agreed that a hearing was premature. By joint request of the parties, the claim was then transferred to the Medical Cost Containment Division for consideration and entry of a Change of Physician Order. An Order was filed on July 11, 2007, by the head of Medical Cost Containment approving a one-time change of physicians to Dr. Gabriel Peal. Apparently, the specific purpose of Dr. Peal's examination was to determine whether the claimant had indeed sustained a recurrent hernia on July 22, 2005.

No further action was taken by either party until respondents filed another Motion to Dismiss on April 9, 2008. In response, the claimant requested a hearing on the merits. A final prehearing conference was conducted on May 14, 2008. A Prehearing Order was filed on May 15, 2008, at which time the claim was scheduled for a formal hearing on June 23, 2008. The stipulations, issues, as well as the contentions of the respective parties were set out above. Because the claimant failed to appear, respondents #1 renewed its Motion to dismiss the claim pursuant to Commission Rule 099.13. Respondents introduced a twenty-six (26) page packet of documentary evidence in support of its Motion.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties at the May 14, 2008, prehearing conference are hereby accepted as fact.
3. The claimant has failed to prosecute his claim.
4. Respondents have controverted compensability of an alleged July 22, 2005, recurrent hernia in its entirety.
5. This claim should be dismissed pursuant to Commission Rule 099.13.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim and the documentary evidence introduced reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised on numerous occasions that his failure to appear and prosecute the claim would result in the dismissal of the claim. A hearing was scheduled on June 23, 2008, on the merits of the claim. Alternatively, the hearing was scheduled to consider respondents' Motion to Dismiss. The claimant's attorney objected to the dismissal of the claim. However, claimant's attorney was unable to present any credible evidence or offer any valid arguments as to why the claim should not be dismissed.

Parenthetically, I feel compelled to point out that this Administrative Law Judge specifically inquired concerning whether the claimant had ever followed

through with the Commission appointed change of physician to Dr. Gabriel Peal. Claimant's counsel acknowledged that the claimant had been evaluated by Dr. Peal while candidly conceding that Dr. Peal opined that the claimant had not sustained a recurrent hernia.

After full consideration of the facts, issues, and the law, and with notice of the hearing having been sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed pursuant to Commission Rule 099.13.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge