

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608112

RICHARD L. CONLEY, JR., EMPLOYEE	CLAIMANT
J M S PROCESSING, INC., EMPLOYER	RESPONDENT
AMERISURE MUTUAL INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED SEPTEMBER 15, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on September 12, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant failing to appear.

Respondents represented by Mr. Lee J. Muldrow, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on September 12, 2008, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

This claim concerns an alleged accident and injury occurring on or about June 6, 2006. Respondents have controverted the claim in its entirety, maintaining that the claimant did not sustain a compensable injury within the meaning of the Arkansas workers' compensation laws in the course and scope of employment on June 6, 2006.

This claim has an unusual and lengthy procedural history. A summary of the procedural history is warranted. By letter dated July 24, 2006, claimant's former attorney filed a Commission form AR-C requesting various benefits while reserving

the right to request a hearing. Respondents filed a notice of representation on October 11, 2006. Thereafter, on November 21, 2006, the Office of Child Support Enforcement in Mississippi County, filed a lien against any benefits to which the claimant might receive. No further action was taken by either party until January 9, 2007, at which time respondents requested a hearing on the issue of compensability. The claim was then assigned to the Adjudication Division. Prehearing Questionnaires were sent to both parties on January 12, 2007. Respondents submitted responses to the questionnaire on January 19, 2007. The claimant, by and through his attorney, submitted responses to the questionnaire while also requesting that the claim be returned to the Commission's general files because the claimant was not requesting a hearing. The claim was returned to the Commission's general files as reflected by correspondence from this office on February 16, 2007, pointing out that the claimant should be the moving party on any hearing request for benefits. Contemporaneous with the actions of the Commission returning the claim to the general files, respondents objected to such action, and requested a prehearing conference, as well as a hearing by filing a Motion to Dismiss for want of prosecution pursuant to A.C.A. §11-9-704(b).

The claim was then reassigned to this office to consider respondents' Motion to Dismiss. A letter was sent to both parties on February 26, 2007, requesting that they confer and advise how they wished to proceed. No response was received from either party. Accordingly, on March 12, 2007, Notice of Prehearing

Conference was sent, scheduling the claim for a conference on March 21, 2007. Prior to the conference, respondents withdrew its hearing request and the claim was, again, returned to the Commission's general files. On May 4, 2007, respondents filed a renewed Motion to Dismiss for want of prosecution. The claim was, again, reassigned to consider respondents' Motion. The claimant was granted twenty (20) days to respond to the Motion to Dismiss. Because no response was received, a hearing was scheduled for June 29, 2007. The subject of the hearing was respondents' Motion to Dismiss the claim. By letter/fax dated June 14, 2007, respondents acknowledged that it had been contacted by claimant's counsel who wished to proceed with a hearing. Respondents, again, withdrew its Motion and the claim was, once again, returned to the Commission's general files.

No further requests were made to either party until February 5, 2008, at which time a letter was submitted by the claimant dismissing his attorney of record. On February 7, 2008, the Clerk of the Commission acknowledged that the claimant's attorney no longer represented the claimant. On April 14, 2008, respondents filed its third Motion to Dismiss for want of prosecution pursuant to A.C.A. §11-9-702(a)(4). The claim was reassigned to this office to consider respondents' Motion to Dismiss. On April 21, 2008, a letter was sent in error to claimant's former attorney advising that the Motion to Dismiss had been filed and granting the claimant twenty (20) days to respond to the Motion. No response was received. On June 2, 2008, a Notice of Hearing was sent to all parties scheduling

the claim for a hearing on June 27, 2008. The subject of the hearing was limited to the Motion to Dismiss. By letter dated June 16, 2008, respondents advised the Commission's Operations and Compliance Division that the claim had been settled and to refer the claim to an administrative law judge for a Joint Petition hearing. Pursuant to the foregoing notification, the Motion to Dismiss hearing was cancelled and a Joint Petition hearing was scheduled for the same date originally scheduled for the Motion to Dismiss hearing. Pursuant to telephonic communications advising that the claimant was a cross-country truck driver and would be unavailable for a Joint Petition hearing, the June 27, 2008, Joint Petition hearing was cancelled. The parties were granted thirty (30) days to submit appropriate documentation. Again, the parties failed and/or refused to submit the documentation requested. On July 28, 2008, the parties were advised to confer and then advise concerning the status of the purported Joint Petition. No response was received. Accordingly, a Notice was sent August 13, 2008, scheduling the claim for a hearing on September 12, 2008. The parties were further advised that unless executed documents were received, the claimant would be required to appear personally at the hearing scheduled for September 12, 2008, to consider either a settlement of the claim or to consider respondents' multiple Motions to Dismiss for want of prosecution. The Notice of Hearing was sent to the claimant both Certified Mail, Return Receipt Requested, as well as First-Class Mail.

On September 11, 2008, a hand-delivered letter was submitted by claimant's

former attorney advising that his office had lost contact with Richard Conley and requested that he be excused from the dismissal hearing scheduled for September 12, 2008. The attorney further advised that he had written several letters making the claimant aware of the dismissal hearing. As previously noted, Notice of the hearing was sent to the claimant personally. The claimant failed and/or refused to appear at the September 12, 2008, hearing. Respondents renewed its Motion that the claim be dismissed.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On July 26, 2006, the claimant filed a claim for benefits alleging a June 6, 2006, injury.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.

#### DISCUSSION

\_\_\_\_\_ Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history reflects that the claimant has failed and/or refused to prosecute his claim. The claimant has been advised that his failure to respond to prior notices, as well as to appear at the scheduled hearing, would result in the dismissal of his claim. A hearing was scheduled at respondents' request pursuant to the decision in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, \_\_\_

S.W.3d \_\_\_ (2004).

After a 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 Ark. Code Ann. §11-9-702(a)(4) and Commission Rule 099.13. Further, it must be noted that the limitations specified in A.C.A. §11-9-702(a)(1) - (3) have expired. Accordingly, the claim is hereby dismissed with prejudice.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge