

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F608102**

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| BRUCE DAVIS, EMPLOYEE                          | CLAIMANT   |
| WHITE RIVER HEALTH SYSTEMS, INC.,<br>EMPLOYER, | RESPONDENT |
| RISK MANAGEMENT RESOURCES,<br>TPA              | RESPONDENT |

**OPINION FILED JUNE 4, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on June 4, 2008, in Batesville, Independence County, Arkansas.

The claimant is represented by THE HONORABLE Vallie Wilkerson, Attorney at Law, North Heber Springs, Arkansas. Ms. Wilkerson failed to appear at said hearing.

Respondent was represented by THE HONORABLE Bill Walmsley, Attorney at Law, Batesville, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on June 4, 2008, to determine whether the above-referenced matter should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004).

The record consists of the transcript of the June 4, 2008 hearing, and the exhibits contained therein. The remainder of the Commission's file has been blue-backed, and is hereby incorporated herein by reference, as it has been marked Commission's Exhibit No. 1.

**DISCUSSION**

The claimant asserted that he sustained a compensable injury

to his low back and neck on March 16, 2006, while working for the respondent-employer. On March 30, 2006, the claimant signed a form AR-N, alleging an injury to his back on March 16, 2006, as a result of pushing a bed from the third floor to the surgery area. The claimant stated that he felt a sharp pain in his lower back. The respondent paid some benefits on the claimant's back injury and controverted the claimant's alleged cervical injury in its entirety.

In a letter to the Commission dated August 30, 2006, the claimant's attorney requested a hearing on the issue of compensability for the claimant's asserted neck injury.

On September 6, 2006, the Commission mailed Prehearing Notices and Questionnaires to the parties. On September 28, 2006, the claimant filed a Response to the Prehearing Questionnaire, and on October 4, 2006, the respondent filed a Response to the Prehearing Questionnaire.

The matter was set for a Prehearing Teleconference, which was scheduled for November 21, 2006. This teleconference was in fact held on this claim, wherein the matter was set for hearing, which was to be held on March 9, 2007, at 10:00 a.m., in Batesville, Arkansas.

Prior to the hearing, the claimant's requested a continuance in order to allow for the entry of additional medical evidence. The Commission granted this request and the hearing was rescheduled for June 6, 2007. In letter dated May 24, 2007, the

respondent requested a 60-day continuance, in an attempt to take the deposition of Dr. Dewayne Eubanks. By agreement of the parties, the hearing was rescheduled for September 5, 2007.

On August 31, 2007, the claimant withdrew his request for hearing so that additional discovery could be had. On September 4, 2007, the Commission granted the request and returned the case to the Commission's general files.

Since this time, the claimant has taken no action to prosecute the matter, nor has a hearing been requested. Therefore, in a letter dated April 14, 2008, the respondent requested that the case be dismissed for want of prosecution. A copy of the same was mailed to the claimant's attorney.

On April 21, 2008, the Commission sent a Notice to the claimant's attorney advising of the pending Motion and of a deadline for filing a response to this Motion. To date, there has been no response from the claimant's attorney to this Notice.

Therefore, on May 15, 2008, the Commission sent a second Notice by certified mail to the respondent, the claimant, and the claimant's attorney advising that the matter had been set for a hearing on the respondent's request for dismissal of the claim for want of prosecution. The hearing was set for June 4, 2008, at 9:30 a.m., in Batesville, Arkansas. To date, there has been no response from the claimant's attorney or the claimant.

A hearing was in fact held on June 4, 2008, on the respondent's request for dismissal of the claim for want of

prosecution. The respondent appeared at the hearing through its attorney. However, the claimant's attorney and the claimant failed to appear at said hearing.

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

After consideration of the evidence presented, I find the respondent's Motion to be well taken. Therefore, pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission's Rule 099.13, this claim should be dismissed without prejudice to the refiling within the applicable time period.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. A claim for benefits was asserted by the claimant due to an injury to his neck and back.
3. The claimant has had ample opportunity to pursue this case but no action has been taken by the claimant in furtherance of his claim. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
4. That the respondent's Motion to Dismiss should be granted without prejudice pursuant to Ark. Code Ann. §11-9-702, and Commission's Rule 099.13.

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**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. This dismissal is without prejudice to the refiling of this claim within the applicable time period.

IT IS SO ORDERED.

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CHANDRA HICKS  
Administrative Law Judge