

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610463

CHARLES D. DOBBS, EMPLOYEE	CLAIMANT
RICHMARK SERVICES, INC., EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, INC., CARRIER	RESPONDENT

OPINION AND ORDER
FILED JULY 2, 2008

This matter comes on for consideration of the respondent's Motion to Dismiss for Failure to Prosecute. The record consists of the transcript of the June 3, 2008, hearing and the exhibits contained therein. After considering the respondent's motion and the claimant's lack of response thereto, I find that the Motion to Dismiss should be granted.

At the hearing on June 3, 2008, the respondents' attorney requested on the record that the Commission enter a dismissal *with prejudice*. Commission Rule 099.013 provides in part that "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." The Commission has the authority under Rule 099.13 to dismiss a claim without prejudice or to dismiss the claim with prejudice when the circumstances are appropriate. Johnson v. Triple T Foods, 55 Ark. App. 83, 929 S.W.2d 730 (1996). However, the Commission has recently noted

the longstanding preference by the Commission and the Courts for dismissals without prejudice. Richard K. White v. Americal Fuel Cell & Coated Fabrics Full Workers' Compensation Commission, Opinion filed April 1, 2008 (F209049).

In the present case, the written Motion to Dismiss filed at the Commission did not specifically request a dismissal with prejudice, and therefore did not allege any facts in support of a request for a dismissal with prejudice. Consequently, when I sent a letter seeking a response to the motion, my letter stated in relevant part:

If I have not received a written response within fifteen (15) days from the date you received this letter, I will interpret that you are waiving any right to a hearing on the respondents' request and that you have no objection to an order dismissing this claim *without prejudice*. (Emphasis added)

In light of the Commission's preference for dismissals without prejudice and the lack of any particularly egregious conduct in this case as occurred in Johnson v. Triple T Foods, supra, I find that the dismissal shall be without prejudice to refiling within the appropriate limitations period.

_____IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge