

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707365

REGINALD FINCH	CLAIMANT
LABOR READY CENTRAL, INC.	NO. 1 RESPONDENT
ESIS, INC. CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED JUNE 30, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

No appearance was made by or for the claimant.

Respondents No. 1 represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

Respondent No. 2 waived its appearance.

STATEMENT OF THE CASE

On June 26, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. This hearing was held on the Respondents' Motion to Dismiss any pending claims for additional benefits that might be currently filed in this case for the claimant's failure to diligently prosecute such claims and his failure to request a hearing within six months, as required by Ark. Code Ann. §11-9-702(d).

A copy of the Respondents' Motion was made Respondents' Exhibit No. 1 to this hearing. Respondents NO. 1's counsel appeared at the hearing on the Motion. The claimant did not appear, either in person, or through counsel. Respondent No. 2 waived their appearance at the hearing.

DISCUSSION

On July 23, 2007, Respondent No. 1 filed an AR-2 denying the benefits requested by the claimant. Then on February 1, 2008, Ms. Carol Worley filed a Motion to Dismiss for Failure to Prosecute. Attorney for the claimant, Tim Isaac, filed a letter to Ms. Dorothy Jackson on February 5, 2008. In the letter Mr. Isaac states that he is aware that a motion to dismiss will soon be filed by opposing counsel and "my client will NOT object. Thank you."

On March 28, 2008, my office sent out correspondence to Mr. Isaac, Mr. Parrish, and to Mr. Finch regarding a motion to dismiss filed by Respondents No. 1. The hearing was to be held April 17, 2008, at 12:45 p.m. in the Fort Smith office. On April 7, 2008, I received correspondence from Mr. Tim Isaac thanking me for the notice of the hearing on the motion to dismiss. He also advised me that his client, Reginald Finch, hereby waives his right to a hearing regarding the motion and requests entry of an order to dismiss without a hearing.

The hearing was held on April 17, 2008, at 12:45 p.m. and Mr. Isaac nor Mr. Finch appeared at that time. However, attorney Jarrod Parrish did appear for the respondents. At that time the Commission entered an order of dismissal in this matter. Within thirty minutes of the hearing on the motion, Mr. Finch came to the hearing room and informed the Commission that he did not wish to dismiss his claim. He further stated that he did not authorize his attorney to do so. Mr. Finch set that out in a hand written note and informed this Commission that he would be getting a new

attorney. At that time I rescinded my order of dismissal in this matter and noted in the order that this matter would be returned to general files within thirty days if no word was received from Mr. Finch.

On June 10, 2008, Mr. Parrish sent a letter and another Motion to Dismiss for Failure to Prosecute. At that time no correspondence had been received from Mr. Finch or his attorney regarding this matter. On June 11, 2008, I sent a letter notifying the parties of a hearing on the Motion informing them that I had scheduled the matter for June 26, 2008, at 10:00 a.m. in the Fort Smith office. The letter was sent to Mr. Tim Isaac, Mr. Jarrod Parrish, Mr. Brandon Clark, and Mr. Reginald Finch.

On June 26, 2008, at 10:00 a.m. the hearing was conducted and only attorney Jarrod Parrish was present. Mr. Clark asked to be excused and was so excused by the Commission. After checking for the claimant and claimant's attorney in the foyer and hallways of the Commission office in Fort Smith, the hearing was begun at approximately 10:15 a.m.

Respondents No. 1 made their Motion orally before the Commission and since no action had been taken by the claimant nor the claimant's attorney since rescinding the order to dismiss dated April 23, 2008, I dismissed the claim for failure to prosecute for those reasons stated in Respondents No. 1's Motion to Dismiss.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the

Commission, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. No hearing has been requested in this matter and more than six months have past since the claimant filed his AR-C with the Commission.

3. Pursuant to Ark. Code Ann. §11-9-702(d) the respondents are entitled to a dismissal without prejudice of any pending claims.

ORDER

Based on my foregoing findings and conclusions, I have no alternative but to deny any pending claims for benefits, so as to prevent such claims for tolling the statute of limitations provided by Ark. Code Ann. §11-9-702(b). This dismissal is without prejudice to refiling any claims for benefits within the time period allotted by Arkansas law.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE