

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F703101

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| LARRY FOWLKES, EMPLOYEE                             | CLAIMANT   |
| OSCEOLA SCHOOL DISTRICT 1, EMPLOYER                 | RESPONDENT |
| RISK MANAGEMENT RESOURCES,<br>INSURANCE CARRIER/TPA | RESPONDENT |

OPINION AND ORDER FILED FEBRUARY 12, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on February 7, 2008, at Jonesboro, Crieghead County, Arkansas.

Claimant, *pro se*, failed to appear.

Respondents represented by Ms. Betty J. Hardy , Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 7, 2008, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702(a)(4) and/or Commission Rule 099.13.

This claim concerns an alleged accident and injury on January 31, 2007. Respondents have controverted the claim in its entirety, maintaining that the claimant cannot prove that he sustained an injury arising out of and during the course of his employment.

A procedural history of the claim is warranted. On March 28, 2007, the claimant, *pro se*, filed a Commission Form AR-C dated March 26, 2007, alleging a January 31, 2007, work incident and injury. On April 2, 2007, respondents filed a Commission Form AR-2, controverting the claim in its entirety. By letter dated May 19, 2007, which was received on May 29, 2007, the claimant requested a hearing.

The claim was initially assigned for a legal advisor conference, but was subsequently referred to the Adjudication Division for a hearing. On June 28, 2007, a Prehearing Questionnaire, as well as a letter advisory concerning the claimant's right to legal representation was sent to the claimant. Because the claimant failed and/or refused to respond to the Prehearing Questionnaire, the claim was returned to the Commission's general files on July 24, 2007. No further correspondence has been received from the claimant since his hearing request dated May 19, 2007.

On December 18, 2007, respondents filed a Motion to Dismiss for want of prosecution, a copy of which was provided to the claimant. On December 20, 2007, the claimant was advised, in writing, to respond to respondents' Motion within twenty (20) days. The claimant was further advised that failure to respond could result in the dismissal of his claim. Said letter was sent both Certified Mail, Return Receipt Requested, as well as First-Class Mail. The claimant received notice as reflected by Return Receipt with a date of delivery of December 28, 2007. Thereafter, at respondents' request, Notice of Hearing was sent January 14, 2008, scheduling the claim for a hearing on February 7, 2008. The subject of the hearing was limited to respondents' Motion to Dismiss the claim. The claimant failed to appear at the scheduled hearing. Respondents, by and through its attorney, introduced 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 claimant has filed a claim for benefits alleging a January 31, 2007, injury.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4).

#### DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history and the documentary evidence introduced 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 recent decision, *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 without prejudice.

This Order shall not be construed to affect the refiling of this claim if filed within the statutory time limits imposed by Arkansas Law.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge