

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513127

GUSTAVO GARCIA	CLAIMANT
DANNY PARSLEY	NO. 1 RESPONDENT
OSVALDO PAINTING	NO. 2 RESPONDENT
COMPANION PROPERTY & CASUALTY CARRIER	NO. 2 RESPONDENT
DAVID PIXLER	NO. 3 RESPONDENT
ISAAC CORDOVA VALENCIA	NO. 4 RESPONDENT
DP DEVELOPMENT	NO. 5 RESPONDENT

OPINION FILED AUGUST 1, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondent No. 1 represented by DONNIE RUTLEDGE, Attorney, Springdale, Arkansas.

Respondents No. 2 represented by ANDY CALDWELL, Attorney, Little Rock, Arkansas.

Respondent No. 3 represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondent No. 4 not represented by counsel.

Respondent No. 5 represented by WILLIAM C. BIRD, III, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 17, 2008, the above captioned claim came on for a hearing on Respondents No. 2's Motion to Dismiss at Springdale, Arkansas. A pre-hearing conference was conducted on October 2, 2007, and a pre-hearing order was filed on October 2, 2007.

DISCUSSION

The claimant filed a Form AR-C on or about November 28, 2005, alleging an injury in November 2005 claiming that he injured both his wrists when falling off a 20-foot ladder. Subsequent to that filing, all the parties listed in the style of this case were brought in.

On May 20, 2008, counsel for the claimant indicated that she had lost contact with her client and had been unable to reach him. At that time she requested that the file be returned to general files Little Rock where the file remained until the filing of Respondents NO. 2's Motion to Dismiss on May 13, 2008. The basis for the Motion is that the claimant has failed to request a hearing following the six-months pursuant to statute.

While a hearing was initially requested, the claimant failed to keep up with his current address and provide that to the Commission as well as his attorney. The claimant failed to appear for the hearing scheduled on June 17, 2008. It was determined during the hearing that all respondents represented at the hearing joined in Respondents' No. 2's Motion to Dismiss.

Claimant's counsel stated that it had been two years since the date of injury and she felt certain more than a year since the last medical treatment. Claimant's counsel stated that to the best of her knowledge the claimant has not abandoned his claim, he is simply missing. Claimant's counsel requested that this Commission deny the Motion or to at least hold the petition in abeyance for thirty days to allow her time to reach the claimant. Claimant's

counsel further stated that she was not prepared to request a hearing at this time.

ADJUDICATION

It was my decision to grant a twenty-day period while I wait for the transcript to allow either side the opportunity to provide me with any documentation, requests for hearing, or anything that might transpire in that twenty-day period prior to the deadline for the transcript being received in my office. To date, this Commission has not received any additional filing in this matter.

The claimant has failed to properly pursue this claim due to his absences and failure to request a hearing in this matter. I find that this case should be dismissed without prejudice.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the statements of the parties, 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 Commission has jurisdiction in this matter.
2. On or about November 28, 2005, the claimant filed a Form AR-C alleging an injury as a result of an incident in November 2005, at which time he alleged he sustained injuries to both wrists as a result of falling off of a ladder. At that time, he indicated his employer was Lindsey & Associates, Inc.

3. The other Respondents have been added over the course of the last two years and this case has been set for hearing on more than one occasion.

4. On or about January 21, 2008, counsel for the claimant indicated that she lost touch with her client and requested that the claim be returned to general files in Little Rock.

5. Neither the claimant nor his attorney has requested a hearing on this matter or taken any additional action in this claim since January 21, 2008.

ORDER

_____Based upon my foregoing findings and conclusion, I have no alternative but to dismiss this claim without prejudice.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE