

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F704144

ROB GREER, EMPLOYEE

CLAIMANT

AFFILIATED FOODS SOUTHWEST, INC., EMPLOYER

RESPONDENT

**ACE AMERICAN INSURANCE COMPANY
c/o ESIS, INC. (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED FEBRUARY 11, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant filed a Form AR-C with the Commission on April 24, 2007, which indicated a date of injury of March 24, 2007. Respondents filed a Form 1 and a Form AR-2 on May 3, 2007, indicating the claim was a medical-only claim. Respondents filed an amended Form AR-2 on May 10, 2007, indicating that the employee has not met the criteria for a compensable injury. By letter dated May 10, 2007, respondents' attorney advised that the respondents are denying and controverting the claimant's entitlement to any benefits whatsoever.

On November 9, 2007, respondents filed a Motion to Dismiss asserting that the claimant had not responded in any way to the respondents' discovery requests or taken any additional action whatsoever to pursue his claim. Respondents assert that it has been over six months since the claimant has taken any action to pursue his claim.

The claimant was advised of respondents' Motion to Dismiss by letter dated November 16, 2007, sent via certified mail and first-class mail to the claimant's last known address. The claimant was warned therein that failure to respond may result

in a dismissal of his claim. No response thereto has been received from the claimant.

A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail scheduling the matter for hearing on January 17, 2008. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant failed to appear at the hearing scheduled on January 17, 2008. The claimant has filed no request for hearing within the last six (6) months.

Commission Rule 13 provides in relevant part as follows:

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

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IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge