

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801733

BLANCA GUERRA

CLAIMANT

DOLLAR GENERAL CORPORATION  
SELF INSURED

RESPONDENT

OPINION FILED **SEPTEMBER 24, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant pro se.

Respondents represented by BETTY HARDY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on the Respondent's Motion to Dismiss on September 22, 2008, in Springdale, Arkansas. The respondent's were represented by counsel at this hearing. The claimant did not appear in person or through counsel.

A copy of the Respondent's Motion was made Commission's Exhibit No. 1 to the hearing. A copy of the notice of hearing on this Motion, which was sent by this Commission to the claimant certified mail return receipt requested, was made Commission's Exhibit No. 2 to the hearing. A copy of the signed receipt of delivery, which had been returned by the U. S. Post Office to this Commission, was made Commission's Exhibit No. 3 to the hearing. Finally, the entire remainder of the Commission's file was made Commission's Exhibit No. 4 and was incorporate by reference in the transcript of the current proceeding.

DISCUSSION

\_\_\_\_\_An AR-C, which apparently sought rehabilitation benefits and medical expenses was filed by fax with this Commission on February 21, 2008. This claim for initial benefits was controverted in its entirety by the respondent.

A review of the Commission's file indicates that the claimant has never taken any action, after the filing of the AR-C, to pursue her claim. The claimant has not requested a

hearing on her claim. In fact, a review of the Commission's file indicates that there has been no communication, whatsoever, from the claimant since the receipt of the faxed AR-C.

Notice of this hearing on the Respondent's Motion to Dismiss, was sent to the claimant at the address she provided on the AR-C. This notice was further sent certified mail return receipt requested, as required by law. The receipt returned by the U. S. Post Office indicates that delivery was accomplished at that address to an individual, who appears to have the last name as the claimant. However, the claimant has not made known to this Commission any objection to the Respondent's Motion and clearly failed to appear at the hearing.

From the forgoing circumstances, the only rationale conclusion that can be drawn is that the claimant has elected to abandon her claim for any benefits that would be attributable to an injury to her back that allegedly occurred while she was working for the respondent on January 31, 2008. I have no alternative but to find that the Respondent's Motion is well taken and that this claim should be dismissed in its entirety for the claimant's failure to diligently prosecute.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. On February 21, 2008, the claimant filed an initial claim for benefits that were attributable to an allegedly employment related injury to her back on or about January 31, 2008.
4. The respondent's denied the occurrence of any employment related injury to the claimant's back on January 31, 2008, or any other date, and controverted this claim in its entirety.

5. The claimant has taken no actions, whatsoever, to pursue her initial claim for benefits, since February 21, 2008. There is no evidence of any reasonable excuse for the claimant's failure to take such action. Thus, the claimant has failed to prosecute her claim in a timely and diligent manner.

ORDER

Based upon my foregoing finding and conclusions, I have no alternative but to deny and dismiss the present claim, in its entirety, for the claimant's failure to diligently prosecute. However, such a dismissal is without prejudice to refiling within the time allotted by Ark. Code Ann. §11-9-702(a).

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE