

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700791

CINDY HARDGRAVE		CLAIMANT
BOST, INC.		RESPONDENT
RISK MANAGEMENT, INSURANCE CARRIER/TPA	NO. 1	RESPONDENT
SECOND INJURY FUND	NO. 2	RESPONDENT

OPINION FILED **MAY 21, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant pro se.

Respondents No. 1 represented by BETTY HARDY, Attorney, Little Rock, Arkansas.

Second Injury Fund represented by DAVID SIMMONS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 20, 2008. This hearing was held on the respondents' Motion to Dismiss any pending claims for benefits for lack of prosecution, under Commission Rule 099.13. Notice of this Motion and hearing was provided to the claimant certified mail return receipt requested. A copy of the respondents' Motion was made Commission's Exhibit No. 1 to the hearing. Copies of the notices sent to the claimant, which were returned by the U. S. Post Office as unclaimed, were admitted as Commission's Exhibit No. 2. The remainder of the Commission's entire file was also admitted as Commission's Exhibit No. 3, and was incorporated by reference in the transcript of the current proceeding.

DISCUSSION

_____A claim was made on the claimant's behalf by her then attorney, Laura McKinnon, by correspondence dated February 12, 2007. This appears to have

been transmitted to the Commission by fax, which bears the date of March 2, 2007. By letter dated February 27, 2007, Ms. McKinnon requested, on the claimant's behalf, a change of physicians, pursuant to Ark. Code Ann. §11-9-514(a). She requested that this change be made to Dr. Cyril Raben. By letter dated April 11, 2007, Pat Capps Hannah, the administrator of the Commission's Medical Cost Containment Division, advised Ms. McKinnon that Dr. Raben was not a member of the respondents' MCO and requested that a doctor in the MCO be selected. By letter dated May 18, 2007, Ms. McKinnon again requested a change of physicians from Ms. Hannah to Dr. Cyril Raben.

On October 18, 2007, Ms. McKinnon requested leave to withdraw as the claimant's counsel of record. This request was subsequently granted by the Full Commission in an Order dated October 29, 2007.

Documents contained in the Commission's file indicate that the respondents accepted this claim as compensable and have paid benefits in the form of medical expenses and temporary total disability benefits. Thus, any dismissal would only apply to claims for additional benefits.

Except for the two attempts to obtain a change physicians to Dr. Raben, no action has been taken by the claimant to pursue any claims for additional benefits. Most importantly, no action whatsoever has been taken in this case since Ms. McKinnon was relieved as the claimant's attorney of record on October 29, 2007.

On March 11, 2008, the respondents' requested a dismissal of any claims for additional benefits that might be considered pending for want of prosecution. For some reason, which is not entirely clear, this claim was assigned to me for appropriate action (it appears that this is actually a Pope County case). The respondents' Motion was set for a hearing and notice was

provided to the claimant in the manner required by law. The record reveals that notices of this hearing, which were sent to the claimant's last known address were returned by the U.S. Post Office as unclaimed. Obviously, the claimant did not appear at the scheduled hearing.

The claimant has clearly failed to take any action whatsoever to prosecute any claim for additional benefits, after being advised by Ms. Hannah to select another physician. I find that this lack of action is sufficient to lead to the conclusion that the claimant has either abandoned any claims for additional benefits or has failed to pursue these claims in a diligent manner. In either event, the respondents' Motion would be appropriate, and any pending claims for additional benefits should be denied and dismissed.

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-self insured employer-third party administrator existed between the parties.

3. The respondents accepted liability for a compensable injury, which occurred on January 12, 2007, and have voluntarily provided benefits. Thus, any claims presently outstanding, would represent claims for additional

4. The claimant has failed to pursue, in a timely manner, any claims she has made by her or made on her behalf for additional benefits arising out of a compensable injury on or about January 12, 2007. Any such pending claims should not be allowed to lay dormant and toll the Statute of Limitations, but should be properly dismissed for lack of diligent prosecution.

ORDER

Based upon my foregoing Findings & Conclusions, I find that the respondents' Motion to Dismiss any pending claims for additional benefits should be and hereby is granted. Any pending claims for additional benefits are dismissed in their entirety and no longer act to toll the Statute of Limitations.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE