

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F400779/F408281

BARRY HARDIN	CLAIMANT
BERRYVILLE SCHOOL DISTRICT	NO. 1 RESPONDENT
RISK MANAGEMENT RESOURCES TPA	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED APRIL 24, 2008

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

Claimant represented by LAURA MCKINNON, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

Respondent No. 2 represented by DAVID SIMMONS, Attorney, Little Rock, Arkansas, but not present at the hearing.

ISSUES

A hearing was conducted to determine whether or not this claim should be dismissed for failure to prosecute pursuant to Ark. Code Ann. §11-9-702. After review of the Commission's file, the full hearing, and a review of the hearing record, I find the Motion to Dismiss should be denied.

STATEMENT OF THE CASE

A hearing was initially conducted on this matter December 13, 2005, with an opinion filed by the administrative law judge on January 26, 2006. In that opinion the administrative law judge determined, among other issues, that the claimant sustained compensable injuries on August 6, 2003, and January 7, 2004, and awarded other benefits. The respondents filed a notice of appeal

and the claimant filed a notice of cross appeal from the opinion of the administrative law judge. In an opinion and ordered dated September 7, 2006, the Full Commission affirmed in part and reversed in part the opinion of the administrative law judge. The claimant subsequently filed a notice of appeal to the Arkansas Court of Appeals and subsequently had the appeal dismissed. A mandate was issued by the Clerk of the Arkansas Court of Appeals dismissing the appeal on January 10, 2007. The respondents contend that the claimant has failed to request a hearing on all of the issues claimed in the AR-C filed by the claimant in this matter, all of which were not litigated on the hearing on December 13, 2005. On March 31, 2008, the claimant's attorney wrote correspondence to the Court requesting a hearing on the merits of the case and appeared before this Court on April 1, 2008, for the hearing on the Motion to Dismiss in this matter. At that time the claimant made a bonafide request for a hearing on the issues not previously litigated in this matter.

After a review of the Commission's file, the evidence before the Court, and arguments of counsel at the hearing, I make the following findings.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation has jurisdiction of this claim.
2. The claimant has made a request for hearing on the merits of this case sufficient to meet the statutory requirement of Ark. Code Ann. §11-9-702.

ORDER

Considering the above, at this time I am denying the respondents' Motion to Dismiss in this matter.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE